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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September, 2012

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2012 REGULAR SESSION
OF THE LEGISLATURE**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

CHAPTER 1. Department of Banking and Consumer Finance

- SEC.
81-1-135. Consumer industry licensees required to participate in multistate licensing system.

CHAPTER 5. General Provisions Relating to Banks and Banking

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- 81-5-151. Definitions.
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81-18-14. Prelicensing education requirements; written test requirement [Repealed effective July 1, 2016].
81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2016].
81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated "escrow account"; accounting for funds [Repealed effective July 1, 2016].
81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2016].
81-18-53. Applicability of chapter [Repealed effective July 1, 2016].
81-18-55. Activities prohibited in the course of residential mortgage loan transactions; compliance with borrower's request for information; compliance with certain requirements whether residential mortgage loan is in default or borrower is in bankruptcy [Repealed effective July 1, 2016].

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81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2016].

CHAPTER 22. Mississippi Debt Management Services Act [Repealed effective July 1, 2013]

- 81-22-1. Short title [Repealed effective July 1, 2013].

SCHEDULE OF NEW SECTIONS

- 81-22-3. Definitions [Repealed effective July 1, 2013].
- 81-22-5. Licensure and annual relicensure [Repealed effective July 1, 2013].
- 81-22-7. Bond required [Repealed effective July 1, 2013].
- 81-22-9. Handling of consumer funds [Repealed effective July 1, 2013].
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ANNOTATED

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CHAPTER 1

Department of Banking and Consumer Finance

SEC.	
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§ 81-1-65. Employment of state banking examiners and other assistants; qualifications; compensation; removal; fingerprinting of all employees and applicants as condition of employment; limited use of criminal history record checks.

The commissioner shall employ such assistants, to be known as state banking examiners, as may be necessary for the efficient operation of the department, to aid him in the discharge of the duties and responsibilities imposed upon him by law. The minimum qualifications for such employment

shall be possession of a bachelor's degree from a recognized college or university, or three (3) years' experience as a bank examiner, bank officer or employee, small loan company officer or employee, or other consumer finance officer or employee and such other qualifications set out for banking examiners in the plan for the state personnel system. However, notwithstanding any provisions to the contrary, any person who is serving as a state banking examiner in the former Department of Bank Supervision on March 21, 1980, shall be qualified to serve as a state banking examiner in the department. The state bank examiners shall not, directly or indirectly, be connected with any banking business in Mississippi or elsewhere during their respective terms of office, after four (4) months from the time of qualifying as an examiner.

The commissioner may employ such additional employees as may be necessary to carry out those duties and responsibilities imposed upon him by law, who shall possess such qualifications set out for their particular position in the plan for the state personnel system.

No examiner or other employee related by consanguinity or affinity to the commissioner within the third degree computed according to the civil law shall be employed by him.

The examiners and all other persons employed by the commissioner under the provisions of this section shall be compensated as provided in the compensation plan for the state personnel system, unless otherwise provided by law. The compensation for such employees shall be payable monthly out of the funds of the department.

The commissioner shall be responsible for all acts of the examiners and the other employees. Any examiner or other employee may be dismissed only in accordance with the laws, rules and regulations applicable to the state personnel system.

As a condition of employment with the department, the commissioner shall require all employees and applicants for employment with the department to be fingerprinted to determine their suitability for employment as examiners or assistants as needed. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The Department of Banking and Consumer Finance shall pay all of the costs in connection with the criminal history record check procedure. These record checks shall not be used by the Department of Banking and Consumer Finance for any purpose other than to determine suitability for employment with the department.

SOURCES: Laws, 1980, ch. 312, § 6; reenacted, Laws, 1982, ch. 303, § 6; Laws, 1990 Ex Sess, ch. 46, § 5; Laws, 1993, ch. 442, § 6; reenacted and amended, Laws, 1994, ch. 622, § 7; reenacted without change, Laws, 1997, ch. 497, § 6; reenacted without change, Laws, 2001, ch. 410, § 6; Laws, 2007, ch. 430, § 1, eff from and after passage (approved Mar. 22, 2007.)

Amendment Notes — The 2007 amendment added the last paragraph.

§ 81-1-89. Records of proceedings; commissioner authorized to disclose certain information to and establish information sharing and exchange program with any government regulatory counterpart to the department.

(1) The commissioner, examiners and all employees of the department shall keep as records of their office proper books showing all acts, matters and things done by them. Except when required in legal proceedings or as authorized under subsection (2) of this section, none of them shall disclose to any person, official or otherwise, any fact or information obtained in the course of the performance of their duties, except so far as it may be incumbent upon them under the law, to report to the commissioner, or to make public records and publish the same. The commissioner may provide to members of the public the information authorized under Section 81-1-100 without being in violation of this section.

(2) The commissioner may disclose to any federal, state or foreign government regulatory counterpart to the department any and all information contained during the course of his official duties as regulator and/or licensor of all financial entities charged to him by statute on December 31, 2005, as well as any others established by statute after that date. The commissioner may establish by agreement an information sharing and exchange program with the same governmental entities to promote and help reduce duplicative and burdensome filings, examinations and any other regulatory requirements by which each party maintains the confidentiality of information that is considered confidential under applicable state and federal statutes.

SOURCES: Laws, 1980, ch. 312, § 18; reenacted, Laws, 1982, ch. 303, § 18; Laws, 1990 Ex Sess, ch. 46, § 17; reenacted and amended, Laws, 1993, ch. 442, § 18; reenacted, Laws, 1994, ch. 622, § 19; reenacted without change, Laws, 1997, ch. 497, § 18; reenacted without change, Laws, 2001, ch. 410, § 18; Laws, 2006, ch. 404, § 1, eff from and after passage (approved Mar. 15, 2006.)

Amendment Notes — The 2006 amendment, in (1), substituted “Except when required in legal proceedings or as authorized under subsection (2) of this section, none of them shall disclose to any person, official or otherwise” for “None of them shall disclose to any person, official or otherwise, except when required in legal proceedings”; and added (2).

§ 81-1-135. Consumer industry licensees required to participate in multistate licensing system.

(1) The Legislature finds that a uniform multistate administration of a multistate licensing system for consumer industry licensees regulated by the Department of Banking and Consumer Finance is consistent with both the public interest and the provisions of law regulating those licensees; therefore, the Commissioner of Banking and Consumer Finance may require consumer industry licensees to participate in a multistate licensing system.

(2) Nothing in this section shall authorize the commissioner to require any person exempt from licensure under the provisions of law regulating consumer industry licensees to participate in the multistate licensing system.

(3) The commissioner may establish, by rule, regulation or order, requirements as necessary, including, but not limited to:

(a) Background checks for:

(i) Criminal history through fingerprint or other databases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the multistate licensing system.

(b) The payment of fees to apply for or renew licenses through the multistate licensing system.

(c) The setting or resetting as necessary of renewal or reporting dates; and

(d) Requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the multistate licensing system.

(4) Any person engaged in activity that requires licensure pursuant to this section shall utilize the multistate licensing system for application, renewal, amendment, surrender and any other activity as the commissioner may require, and shall pay all applicable charges to utilize the multistate licensing system.

(5) The commissioner is authorized to establish relationships or contacts with the multistate licensing system or other entities designated by the multistate licensing system to collect and maintain records and process transaction fees or other fees related to licensees.

SOURCES: Laws, 2011, ch. 443, § 1, eff from and after July 1, 2011.

CHAPTER 5

General Provisions Relating to Banks and Banking

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GENERAL PROVISIONS

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§ 81-5-1. General regulations.

(1) All banking corporations are prohibited, either through their officers or as a banking agency, from participating, directly or indirectly, in the operation of any underwriting syndicate which handles securities for resale. However, this inhibition shall not apply to bonds issued by federal, state, county or other governmental agencies.

(2) The executive officers of banking corporations now existing or hereafter organized under the laws of the State of Mississippi, are prohibited from owning stock in private banking houses or other agencies engaged in the business of underwriting securities for resale.

(3) The Commissioner of Banking and Consumer Finance is authorized, empowered and directed to promulgate rules and regulations, relative to withdrawals of deposits from savings banks, trust companies and other banking institutions, and the commissioner may, in cases of emergency, declare bank holidays and do any and all things necessary to insure, protect and conserve the resources of such banks.

(4) All state banking corporations are prohibited from making loans to state, county, municipal and district governmental agencies, unless such loans are made in strict compliance with legal enactments and regulations which govern, and such banking corporations are further prohibited from transferring funds from one state, county, municipal or district account to another unless authorized by warrant issued by proper authority, and such banking corporations are prohibited from discounting state, county, municipal, district or other public certificates and warrants, but such certificates and warrants may be used as collateral to guarantee the payment of notes or other obligations.

(5) The board of directors of any banking corporation created under the laws of this state may, at its option, require any or all employees of such to file with the board of directors a sworn financial statement semiannually or more often if it so desires.

(6) Any bank may, at its option, pay all checks drawn on it with currency or valid exchange drawn on a bank in a reserve city not more than five hundred (500) miles distant from such bank; but each depositor is entitled to have his checks paid each day in currency to the total extent of ten percent (10%) of his deposit if it exceeds One Thousand Dollars (\$1,000.00) and at least One Hundred Dollars (\$100.00) each day if his balance is over One Hundred Dollars (\$100.00) and less than One Thousand Dollars (\$1,000.00), and may demand his entire balance in currency at any time if One Hundred Dollars (\$100.00) or less.

(7) All state banking corporations may purchase for the account of their customers bonds, stocks and other securities, and such banking corporations may charge for their service in connection with the handling of such transactions only actual expenses plus the usual broker's fees allowed for similar service by national banks.

(8) Any state bank may purchase, lease or otherwise acquire automatic data processing computers and related machinery and equipment, and such

bank may utilize and operate such computers, machinery and equipment in performing for itself, its customers or any other bank such services as may be desired including, but not limited to, check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical or similar functions performed by and for a bank. Corporations may be organized under the laws of the State of Mississippi for the purpose of owning and operating, by purchase, lease or otherwise, such computers, related machinery and equipment as aforesaid, and such corporations may perform for any bank those services as above mentioned; and stock of such corporations shall be legal investments for state banks to the same extent that stock of bank service corporations is eligible for acquisition by national banks under the provisions of the Bank Service Corporation Act, Public Law 87-856, 76 Stat. 1132.

(9) In addition to other powers, a state-chartered bank shall have and possess such of the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state as may be prescribed by the State Board of Banking Review by general regulation under the circumstances and conditions set out therein. In the event of a conflict between the provisions of this subsection (9) and the provisions of any other act or acts, directly or indirectly, governing or regulating the activities of state-chartered banks, the provisions of this subsection (9) shall control, and insurance activities of all banks, their subsidiaries, affiliates, branches, officers and employees doing business in this state shall be governed by the provisions of Title 83, Mississippi Code of 1972, only to the extent that Title 83, Mississippi Code of 1972, applies to national banks in Mississippi.

SOURCES: Codes, 1942, § 5224; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1954, ch. 164; Laws, 1966, ch. 252, § 1; Laws, 1982, ch. 486; Laws, 1983, ch. 342, § 1; Laws, 1988, ch. 543, § 2; Laws, 1988, ch. 576; Laws, 1991, ch. 345, § 1; Laws, 1995, ch. 307, § 1; Laws, 1997, ch. 305, § 1; Laws, 2006, ch. 412, § 1, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment deleted former (7), which read: “No loan in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be made by any state banking corporation except on approval of a loan committee selected by a majority of the board of directors. Such committee shall require of all such prospective borrowers a financial statement in connection with all unsecured loans in excess of Twenty-five Thousand Dollars (\$25,000.00)”; and redesignated former (8) through (10) as present (7) through (9).

§ 81-5-33. Powers in regard to trusts.

Banks may accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or corporation or that may be committed or transferred to them by order of any court of record. They may receive money in trust, take and accept by grant, assignment, transfer, devise or bequest, and hold any real or personal estate or trusts created according to the laws of this or any other state or of the United States,

and execute those legal trusts in regard to the same, on such terms as may be directed or agreed upon. They may act as agent for the investment of money or the management of property for other persons, and as agent for persons and corporations for the purpose of issuing, registering, transferring or counter-signing the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state, county or public authority on such terms as may be agreed upon. They also may act as guardian for any minor or person with mental illness under the appointment of any court of record having jurisdiction of the person or estate of the minor or person with mental illness and may act as administrator or executor of the estate of any deceased person. They may act as agent or attorney in fact and as commissioner for the sale of property, both real and personal, and may act as assignee or receiver, or as trustee in mortgages or bond issues, or in any other fiduciary capacity authorized by law. They may accept trust funds or other property upon specially agreed terms and pay or deliver the same to the owners, beneficiaries or others, as the case may be, when and as the same should be paid or delivered according to the terms of the trust agreement under which it is held. Whenever under the laws of this or any other state or under the rule or order of any court, the execution of a bond for the protection of a private or court trust is required, a trust company shall be authorized to execute the bond for the protection of any trust or trust estate being administered by it.

Banking corporations created, organized and doing business under the laws of the State of Mississippi may exercise, without amendment of their charters, and under their charter authority to engage in the general business of banking, all or any of the foregoing powers. However, before any bank whose charter merely authorizes the exercise of general banking functions may exercise those powers, the previous written consent of the Commissioner of Banking and Consumer Finance shall be obtained.

Banks exercising any or all of those powers shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of this section or under the authority granted to them in their charter or otherwise. Those books and records shall be inspected and examined by the state bank examiners at each and every examination of the bank.

No bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment or distribution shall be carried in a separate account and shall not be used by the bank in the conduct of its business, unless it first sets aside in the trust department United States bonds or bonds of the State of Mississippi or any subdivision of the state, the market value of which shall at all times be not less than ten percent (10%) in excess of the total funds so held, exclusive of the portion of funds insured by the Federal Deposit Insurance Corporation.

In the event of the failure or liquidation of the bank, the owners of the funds held in trust for investment or distribution shall have a prior lien on the

bonds or other securities so set apart in addition to their claim against the assets of the bank.

In any case in which the laws of this state require that one acting as trustee, executor, administrator or in any fiduciary capacity must take an oath or make an affidavit, the president, vice president, cashier or trust officer of a bank may take the necessary oath or execute the necessary affidavit.

In making investments of trust funds, it shall be unlawful for any bank to purchase securities from itself or to purchase securities in which it may be interested, directly or indirectly. However, any bank, including a national bank, authorized to do business in this state in a fiduciary capacity may, unless prohibited or otherwise limited by the instrument governing the fiduciary relationship, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank as fiduciary, invest and reinvest in the securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding that the banking institution or affiliate of the banking institution provides services to the investment company or investment trust, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise, and receives reasonable remuneration for those services, so long as the total compensation paid by the trust or custodial estate as trustee's fees and mutual fund fees is reasonable, taking into account the nature and extent of the trustee's duties, the nature and extent of the services provided to the investment company or investment trust, and the total compensation, costs and fees that would otherwise be paid, directly or indirectly, by the trust or custodial estate if the investment were made in an investment company or investment trust for which the bank or its affiliates provided no services. With respect to any funds so invested, the banking institution shall make available by statement, prospectus or otherwise to all current income beneficiaries of an account the basis, expressed as a percentage of asset value or otherwise, upon which the remuneration is calculated. No bank shall lend to any officer, director or employee of the bank any funds held in trust by it, and any officer, director or employee making a loan, or to whom such a loan is made, shall be guilty of a felony and, upon conviction, may be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned in the State Penitentiary for not more than five (5) years, or by both that fine and imprisonment, in the discretion of the court.

SOURCES: Codes, 1942, § 5198; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1992, ch. 347, § 1; Laws, 2008, ch. 442, § 21, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment, in the fourth sentence of the first paragraph, substituted “or person with mental illness” for “or insane person” twice; in the second paragraph, divided the former first sentence into two sentences by substituting “foregoing powers. However, before” for “foregoing powers, but before,” and in the second sentence, substituted “banking functions may exercise” for “banking functions, shall exercise”; in the next-to-last paragraph, substituted “fiduciary capacity

must take an oath” for “fiduciary capacity, shall take an oath”; and made minor stylistic changes.

§ 81-5-55. Name of depositors not to be disclosed.

In no instance shall the name of any depositor, or the amount of his deposit, be disclosed to anyone, except to report to approved parties, such as credit bureaus, account verification services and others, the forcible closure of a deposit account due to misuse, such as fraud, kiting or chronic bad check writing or when required to be done in legal proceedings, for verification of public assistance in cases in which the Department of Human Services or the Division of Medicaid certifies that it has on file an effective written authorization from the depositor authorizing the disclosure of that information, for verification of the financial exploitation of a vulnerable person in cases in which the Attorney General submits a written authorization, or in case of insolvency of banks. The parties referred to in this section must be approved by the Commissioner of Banking and Consumer Finance and must satisfactorily demonstrate their reliability and credibility of their activities. Disclosure of depositor information to any affiliate or agent providing services on behalf of the bank shall not be considered disclosure of depositor information within the meaning of this section. The term “affiliate” means a corporation or business entity that controls, is controlled by or is under common control with the bank. The term “agent” means anyone who has an agreement, arrangement or understanding to transact business for the bank by the authority and on account of the bank, provided that the agreement binds the agent to the same degree of confidentiality of disclosure of bank records as the bank. Any violation of this provision shall be considered a misdemeanor and, upon conviction thereof, in any court of competent jurisdiction, the person shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisoned in the county jail not more than six (6) months or both, and in addition thereto, shall be liable upon his bond to any person damaged thereby.

This section shall not be construed to prohibit the disclosure to the State Treasurer, State Auditor, Legislative Budget Office, Joint Legislative Committee on Performance Evaluation and Expenditure Review or the Department of Finance and Administration, of any information about any type of account or investment, including certificates of deposit, owned by any public entity of the State of Mississippi. In addition, this section shall not be construed to prohibit, or to impose liability for, the disclosure of information to the Department of Human Services, the Child Support Unit of the Department of Human Services, the Division of Medicaid, or their contractors or agents, pursuant to Chapter 13 or Chapter 19 of Title 43, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5279; Laws, 1934, ch. 146; Laws, 1984, ch. 327; Laws, 1985, ch. 525, § 32; Laws, 1987, ch. 326, § 2; Laws, 1997, ch. 542, § 4; Laws, 1997, ch. 588, § 146; Laws, 2001, ch. 603, § 13, Laws 2012, ch. 434, § 2, eff from and after July 1, 2012.

Editor's Note — In the first paragraph of this section, there is a reference to “vulnerable adult.” Laws of 2010, ch. 375, amended the “Vulnerable Adults Act,” codified at § 43-47-1 et seq., to be the “Vulnerable Persons Act.”

Amendment Notes — The 2012 amendment rewrote the first sentence in the first paragraph; in the second paragraph, inserted “the Division of Medicaid” preceding “or their contractors or agents, pursuant to” and “Chapter 13” thereafter and made minor stylistic changes.

§ 81-5-62. Accounts payable at death.

Accounts payable at death may be established under the following conditions:

(a) An account in a bank, including a national bank, may be opened by any person or persons with directions to make such an account payable on the death of the person or persons opening such an account to the named beneficiary or beneficiaries. When an account is so opened, the bank shall pay any monies to the credit of the account from time to time to, or pursuant to the order of, the person or persons opening such an account during his or their lifetime in the same manner as if the account were in the sole name or names of such person or persons. The term “accounts” or “account” as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, non-negotiable or otherwise.

(b) If the named beneficiary or one (1) of the beneficiaries so named is an individual beneficiary and the individual beneficiary or beneficiaries survive the death of the person opening such an account, and the individual beneficiary or all of the individual beneficiaries so named are sixteen (16) years of age or over at the death of the person opening such an account, the bank shall pay the monies to the credit of the account, less all setoffs and charges, to the named individual beneficiary or beneficiaries or upon his or their order, as hereinafter provided, and such payment by the bank shall be valid, notwithstanding any lack of legal age of the named beneficiary or beneficiaries; provided, however, where such an account is opened or subsequently held by more than one (1) person, the death of one (1) of such persons shall not terminate the account and the account shall continue as to the surviving person or persons and the named beneficiary or beneficiaries subject to the provisions of paragraphs (c) through (j) of this section. For purposes of this section, the term “individual beneficiary” shall refer to a living person who is the named beneficiary of a payable on death account.

(c) If the named individual beneficiary or all of the individual beneficiaries so named survive the death of the person or persons opening such an account and are under sixteen (16) years of age at such time, the bank shall pay the monies to the credit of the account, less all setoffs and charges:

(i) When or after the named individual beneficiary becomes sixteen (16) years of age, to the named beneficiary or upon his order; or

(ii) When more than one (1) individual beneficiary is named, the bank shall pay to each individual beneficiary so named his proportionate

interest in such account as each severally becomes sixteen (16) years of age; or

(iii) To the legal guardian of the named individual beneficiary, wherever appointed and qualified, or where more than one (1) beneficiary is named, the bank shall pay such individual beneficiary's proportionate interest in such account to his legal guardian wherever and whenever appointed and qualified; or

(iv) In the event no guardian is appointed and qualified, payment may be made in accordance with the provisions of Section 93-13-211 et seq., in situations to which such section or sections are applicable.

(d) Where the death of the person or persons opening such an account terminates the account under the provisions of paragraphs (b) and (c) of this section, and where one or more of the named individual beneficiaries are under sixteen (16) years of age and the remainder of the named individual beneficiaries are sixteen (16) years of age or over, the bank shall pay the monies, less all setoffs and charges, to:

(i) The named individual beneficiaries sixteen (16) years of age or over at the time of termination of such account pursuant to paragraph (b) of this section; and

(ii) The named individual beneficiaries under sixteen (16) years of age at the time of termination of such account pursuant to paragraph (c) of this section.

(e) If the named beneficiary or one (1) of the beneficiaries so named is a revocable trust, evidenced by a written trust agreement, which trust is still in existence at the death of the person opening such an account, the bank shall pay the monies to the credit of the account, less all setoffs and charges, to the trustee of the named revocable trust or upon his or their order, as hereinafter provided, upon being presented an affidavit by the trustee stating that the name of the trust, the names of the current trustees, and that the trust is still in existence at the time of presentment of the affidavit. Such payment by the bank shall be valid, notwithstanding any lack of actual authority by the trustee, and the bank shall be discharged and released to the same extent as if the bank had dealt with the personal representative of the decedent. Such bank shall not be required to see to the proper application of the monies or evidence thereof or to inquire into the truth of any statement presented in the affidavit by the trustee.

(f) Where such account is opened or subsequently held by more than one (1) person, the bank, in the absence of any written instructions to the contrary which are consented to by the bank, shall accept payments made to such account and may pay any monies to the credit of such account from time to time to, or pursuant to the order of, either or any of such persons during their life or lives in the same manner as if the account were in the sole name of either or any of such persons.

(g) When a person or persons open an account in a bank in the form set forth in paragraph (a) of this section, and makes a payment or payments to such account or causes a payment or payments to be made to such account,

it shall be conclusively presumed that such person or persons intend to vest in the named beneficiary or beneficiaries a present beneficial interest in such payment so made and in the monies to the credit of the account from time to time, to the end that, if the named beneficiary or beneficiaries survive the person or persons opening such an account, all the right and title of the person or persons opening such an account in and to the monies to the credit of the account at the death of such person or persons, less all setoffs and charges, shall, at such death, vest solely and indefeasibly in the named beneficiary or beneficiaries subject to the conditions and limitations of paragraphs (b) through (j) of this section.

(h) If the named individual beneficiary predeceases the person opening such an account, or if the named beneficiary is a revocable trust that is terminated, the present beneficial interest presumed to be vested in the named beneficiary pursuant to paragraph (g) of this section shall terminate at the death of the named individual beneficiary or upon the termination of the revocable trust named as a beneficiary. In such case, the personal representatives of the named individual beneficiary, the beneficiaries of the revocable trust, and all others claiming through or under the named beneficiary, shall have no right in or title to the monies to the credit of the account, and the bank shall pay such monies, less all setoffs and charges, to the person opening such an account or pursuant to his order in the same manner as if the account were in the sole name of the person opening such an account; provided, however, where such an account names more than one (1) beneficiary, the death of one (1) of the individual beneficiaries or the termination of a revocable trust beneficiary so named shall not terminate the account and the account shall continue as to the surviving beneficiary or beneficiaries subject to the provisions of paragraphs (b) through (j) of this section.

(i) A bank which makes any payment pursuant to paragraphs (b) through (h) of this section, prior to service upon the bank of an order of court restraining such payment, shall, to the extent of each payment so made, be released from all claims of the person or persons opening such an account, the named beneficiary or beneficiaries, their legal representatives, and all others claiming through or under them.

(j) When an account is opened in a form described in paragraph (a) of this section, the right of the named beneficiary or beneficiaries to be vested with sole and indefeasible title to the monies to the credit of the account on the death of the person or persons opening such an account shall not be denied, abridged or in anyway affected because such right has not been created by a writing executed in accordance with the law of this state prescribing the requirements to effect a valid testamentary disposition of property.

SOURCES: Laws, 1984, ch. 326, § 2; Laws, 1988, ch. 484, § 2; Laws, 2008, ch. 327, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote (b); inserted “individual” preceding “beneficiary” and “beneficiaries” everywhere it appears in (c) and (d); in (d), deleted “to the credit of the trust” following “pay the monies” near the end of the introductory paragraph; added (e), and redesignated former (e) through (i) as present (f) through (j); substituted “paragraphs (b) through (j)” for “paragraphs (b) through (i)” in (g); rewrote (h); and substituted “paragraphs (b) though (h)” for “paragraphs (b) through (g) in (i).

§ 81-5-63. Deposit in name of two or more persons; payments to successors of deceased depositors without administration; “successor” defined.

(1) When a deposit has been made or is hereafter made in the name of two (2) or more persons, payable to any one (1) of those persons, or payable to any one (1) of those persons or the survivor, or payable to any one (1) of those persons or to the survivor or survivors, or payable to the persons as joint tenants, the deposit or any part thereof or interest or dividends thereon may be paid to any one (1) of those persons, without liability whether one or more of those persons is living or not, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. The making of a deposit in that form, or the making of additions thereto, shall create a presumption in any action or proceeding to which either the bank or any survivor is a party of the intention of all the persons named on the deposit to vest title to the deposit and the additions thereto and all interest or dividends thereon in the survivor or survivors.

(2)(a) Any bank may pay to the successor of a deceased depositor, without necessity of administration, any sum to the credit of the decedent not exceeding Twelve Thousand Five Hundred Dollars (\$12,500.00), without liability to any other persons, relatives or beneficiaries, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. This section shall apply to all banking institutions, including national banks and postal savings banks within the state. The term “deposit” as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, nonnegotiable or otherwise.

(b) For the purposes of this subsection, “successor” means the decedent’s spouse; or, if there is no surviving spouse of the decedent, then the adult with whom any minor children of the decedent are residing; or, if there is no surviving spouse or minor children of the decedent, then any adult child of the decedent; or, if there is no surviving spouse or children of the decedent, then either parent of the decedent; or, if there is no surviving spouse, children or parent of the decedent, then any adult sibling of the decedent.

SOURCES: Codes, 1942, § 5205; Laws, 1934, ch. 146; Laws, 1950, ch. 201; Laws, 1966, ch. 250; Laws, 1966, ch. 316, § 10-105; Laws, 1968, ch. 251, § 1; Laws, 1980, ch. 426, § 1; Laws, 1988, ch. 484, § 3; Laws, 1995, ch. 380, § 1; Laws,

2001, ch. 458, § 1; Laws, 2009, ch. 419, § 1, eff from and after passage (approved Mar. 23, 2009.)

Amendment Notes — The 2009 amendment in (2)(a), deleted “as defined in Section 91-7-322(2)”; and added (2)(b).

JUDICIAL DECISIONS

3. Joint ownership of account.

When three individuals jointly owned four certificates of deposit (CDs), and the word “or” was listed in between the owners’ names on the CDs, any one of the owners were entitled to treat the CDs as their own, pursuant to Miss. Code Ann. § 81-5-63(1), and each had an equal right to withdraw the CDs; thus, the bank holding the CDs was not allowed to favor one owner over another. *Epperson v. SOUTHBANK*, — So. 2d —, 2011 Miss. App. LEXIS 350 (Miss. Ct. App. June 14, 2011), reversed by 2012 Miss. LEXIS 248 (Miss. May 24, 2012).

In a case where a certificate of deposit (CD) was jointly owned, a bank was properly found not liable when one owner unilaterally withdrew the funds for placement into another CD; either of the co-owners were able to withdraw the funds.

DeJean v. DeJean, 982 So. 2d 443 (Miss. Ct. App. 2007), writ of certiorari denied by 981 So. 2d 298, 2008 Miss. LEXIS 236 (Miss. 2008).

Trustee was granted summary judgment against the debtors’ children for the value of the proceeds from certificates of deposit (CDs), pursuant to 11 U.S.C. § 550(a)(1), and avoided, pursuant to 11 U.S.C. § 548(a)(1)(B), the debtor wife’s transfers of the proceeds into bank accounts for the children because the CDs vested in the debtor, the designated payable on death beneficiary, when the owner died and the transfers were made within one year of the bankruptcy filing, were made while the debtors were insolvent, and were made for no consideration or less than reasonably equivalent value. *Applewhite v. Akin* (In re Akin), 366 B.R. 619 (Bankr. N.D. Miss. 2007).

§ 81-5-79. Small loans.

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

DEPOSITORY FINANCIAL INSTITUTIONS SELF-EVALUATION REPORTS

- SEC.
- 81-5-151. Definitions.
- 81-5-153. Discovery and admissibility in evidence of self-evaluation reports of depository financial institutions; divulgence or dissemination of information in reports; exemption from Public Records Act.

§ 81-5-151. Definitions.

For purposes of Sections 81-5-151 and 81-5-153, the following words and phrases shall have the meanings ascribed herein, unless the context requires otherwise:

(a) “Bank” shall have the same definition as set forth in Section 81-3-1 and shall include the bank holding company, affiliates, and subsidiaries of a bank.

(b) “Self-assessment” means a voluntary, self-initiated internal assessment, audit or review of a bank, its practices, policies and procedures or the bank’s review of a facility or activity at a facility acting under contract as the bank’s service provider, including, but not limited to, mortgage servicers and sub-servicers, credit and debit card processors, and providers of loan document systems.

(c) “Self-assessment report” means any document, including any audit, report, finding, communication or opinion or any draft of an audit, report, finding, communication or opinion, prepared by internal personnel or by outside attorneys, accountants or consultants as a part of or in connection with a self-assessment that is made in good faith, and which report is not published outside the bank unless publication is made to bank regulators or to third parties acting pursuant to an agreement to preserve its confidentiality. Such agreement to preserve confidentiality need not be in writing and may be evidenced by an indication of confidentiality on the face of any such self-assessment report, or by a verbal agreement regarding its confidentiality.

(d) “Bank regulators” means any state, federal or municipal governmental agency, bureau, commission, office or other governmental entity charged with the regulation and/or supervision of a bank or regulation or supervision of any activity in which a bank may be engaged. The term shall include, but is not limited to, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Fair Trade Commission, and the Mississippi Department of Consumer Finance and Banking.

(e) “Banking law” means any federal, state or local statute, rule or regulation affecting or governing a bank or any activity in which a bank is or may be engaged, or any order, award, agreement, release, permit, license, standard or notice or issued by a federal, state or local court, agency, or governmental authority in pursuance thereof.

SOURCES: Laws, 2012, ch. 444, § 1, eff from and after July 1, 2012.

§ 81-5-153. Discovery and admissibility in evidence of self-evaluation reports of depository financial institutions; divulgence or dissemination of information in reports; exemption from Public Records Act.

(1) A self-assessment report is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding and is not subject to any discovery under the rules of civil procedure or administrative procedure, unless:

(a) The bank, irrespective of whether the self-assessment was conducted and/or prepared by a private contractor hired by the bank, expressly waives the protections of this section; or

(b) The court of record or hearing officer, who shall be neutral and independent, after an in camera review, determines that:

(i) The self-assessment report shows that the bank is not or was not in substantial compliance with a material provision of banking law, and

(ii) The bank did not initiate good-faith efforts to achieve substantial compliance with a material provision of banking law within a reasonable time after the noncompliance was discovered, and

(iii) The bank's failure to comply caused material harm to a bank customer or consumer.

(iv) For purposes of subparagraphs (i) and (ii) of this paragraph (b) only, if the evidence shows noncompliance by the bank, the bank may demonstrate that appropriate efforts to achieve compliance were or are being taken by establishing a phased schedule of actions to be taken to bring the bank into compliance, and those efforts shall protect the bank's self-assessment report(s) from disclosure.

(c) The court of record or a hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the self-assessment report was prepared to avoid disclosure of information in an investigative, administrative or judicial proceeding that was underway at the time of its preparation, or for which the bank had been provided written notification that an investigation into a specific violation had been initiated, or it is found that a condition exists that demonstrates imminent and substantial harm to bank customers or consumers.

(2) The self-evaluation privilege does not apply to:

(a) Information in the possession of a regulatory agency obtained through observation, sampling, examination or otherwise and which is subject to public disclosure under the Mississippi Public Records Act of 1983; or

(b) Information obtained through any source independent of the self-assessment report and which was not protected by a confidentiality agreement; or

(c) Evidence existing before the commencement of and independent of the voluntary self-assessment, which is not protected by a confidentiality agreement and is not related to a request for compliance assistance from bank regulators.

(3)(a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-assessment privilege under subsection (1) of this section is applicable to a self-assessment report or that privilege does not apply to a self-assessment report under the provisions of subsection (2) of this section, then a court record or hearing officer, who shall be neutral and independent, may allow that party limited access to the self-assessment report for the purposes of an in-camera

review only. The court of record or the hearing officer may grant limited access to all or part of the self-assessment under the provisions of this subsection (3) upon such conditions as may be necessary to protect the confidentiality of the self-assessment report. A moving party who obtains access to a self-assessment report under the provisions of this subsection (3) may not divulge any information from the report except as specifically allowed by the court or hearing officer.

(b) If any party divulges all or any part of the information contained in a self-assessment report in violation of the provisions of paragraph (a) of this subsection (3) or if any other person knowingly divulges or disseminates all or any part of the information contained in a self-assessment report that was provided to the person in violation of the provisions of paragraph (a) of this subsection (3), the party or other person is liable for any damages caused by the divulgence or dissemination of the information that are incurred by the bank. The court or hearing officer may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

(4) Nothing in this section limits, waives or abrogates the scope or nature of any statutory or common law privilege.

(5) A bank asserting a self-assessment privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of a self-assessment report has the burden of proving that such a privilege does not exist under this section.

(6) All self-assessment reports that are protected by the self-assessment privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11.

SOURCES: Laws, 2012, ch. 444, § 2, eff from and after July 1, 2012.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

CHAPTER 12

Savings Associations Law

SEC.

81-12-143. Payments to successors without administration.

§ 81-12-143. Payments to successors without administration.

Any association may pay to the successor of a deceased depositor, as defined in Section 91-7-322(2), without necessity of administration, any sum to the credit of the deceased not exceeding Twelve Thousand Five Hundred Dollars (\$12,500.00), upon affidavit that the deceased died leaving no last will and testament and bond signed by each of the successors guaranteeing payment of any lawful debts of the deceased to the extent of that withdrawal. The receipt of acquittance of the person or persons so paid shall be valid and

sufficient release and discharge to the association as against all other persons and claimants for any payment so made; however, the bond shall be made available to any creditor for suit against the makers of the bond.

SOURCES: Laws, 1977, ch. 445, § 39; Laws, 1980, ch. 426, § 2; reenacted, 1982, ch. 301, § 72; Laws, 1990 Ex Sess, ch. 52, § 73; Laws, 1993, ch. 441, § 73; Laws, 1994, ch. 622, § 105; Laws, 1995, ch. 380, § 2; reenacted without change, Laws, 1997, ch. 496, § 70; reenacted without change, Laws, 2001, ch. 458, § 2; Laws, 2003, ch. 394, § 1, eff from and after July 1, 2003.

Amendment Notes — The 2003 amendment rewrote the first sentence of the section to provide that the funds that savings and loan associations and savings banks may pay to the successors of deceased depositors without necessity of administration are any funds to the credit of the deceased, not just those funds in savings accounts.

CHAPTER 13

Credit Unions

SEC.

- 81-13-58. Deposit in name of two or more persons; payments to successors of deceased depositors without administration.
- 81-13-65. Conversion from state to federal credit union and from federal to state credit union.

§ 81-13-39. Authority to lend or invest funds; interest rates.

Editor's Note — This section was reenacted without change by Laws of 1997, ch. 368, § 21, effective from and after July 1, 1997. Since the language of the section as it appears in the bound volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by the State Attorney General.

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 81-13-58. Deposit in name of two or more persons; payments to successors of deceased depositors without administration.

When a deposit has been made or is hereafter made in the name of two (2) or more persons, payable to any one (1) of those persons, or payable to any one (1) of those persons or the survivor, or payable to any one (1) of those persons or to the survivor or survivors, or payable to the persons as joint tenants, the deposit or any part thereof or interest or dividends thereon may be paid to any one (1) of those persons, without liability whether one or more of those persons is living or not, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the credit union for any payment so made. The making of a deposit in that form, or the making of additions

thereto, shall create a presumption in any action or proceeding to which either the credit union or any survivor is a party of the intention of all the persons named on the deposit to vest title to the deposit and the additions thereto and all interest or dividends thereon in the survivor or survivors. Any credit union may pay to the successor of a deceased depositor, as defined in Section 91-7-322(2), without necessity of administration, any sum to the credit of the decedent not exceeding Twelve Thousand Five Hundred Dollars (\$12,500.00), without liability to any other persons, relatives or beneficiaries, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the credit union for any payment so made. This section shall apply to all credit unions, including state and federal credit unions within the state. The term "deposit" as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, nonnegotiable or otherwise.

SOURCES: Laws, 2001, ch. 458, § 4, eff from and after July 1, 2001.

Editor's Note — The text of this section is reprinted in the supplement to correct a publishing error appearing in the main volume. The words "hereaftermade" have been changed to "hereafter made."

§ 81-13-65. Conversion from state to federal credit union and from federal to state credit union.

(1) A state credit union may be converted into a federal credit union by complying with the following requirements:

(a) The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members, either at a regular meeting or a special meeting called for that purpose by a majority of the directors of the state credit union. Written notice of the proposition and of the date set for the vote shall be delivered or mailed to each member, not more than thirty (30) days nor less than seven (7) days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members attending said meeting.

(b) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Commissioner of Banking and Consumer Finance within ten (10) days after the vote is taken.

(c) Promptly after the vote is taken and in no event later than ninety (90) days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the Federal Credit Union Act to make it a federal credit union, and within ten (10) days after receipt of the federal credit union charter there shall be filed with the commissioner a copy of the charter thus issued. Upon such filing the credit union shall cease to be a state credit union.

(d) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of this chapter. The successor

federal credit union shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(2)(a) A federal credit union, organized under the Federal Credit Union Act, may be converted into a state credit union by:

- (i) Complying with all federal requirements requisite to enabling it to convert to a state credit union or cease being a federal credit union;
- (ii) Filing with the commissioner proof of such compliance, satisfactory to the commissioner;
- (iii) Filing with the Department of Banking and Consumer Finance the articles of incorporation required for state credit unions; and
- (iv) Filing such other statements or proof as may from time to time be required by the commissioner.

(b) Should the commissioner determine that an audit should be made of the credit union prior to approval, he shall direct such audit and the reasonable, actual cost thereof shall be paid by the credit union.

(c) When the commissioner has been satisfied that all of such requirements have been complied with, the commissioner shall approve the charter of incorporation. Upon such approval the federal credit union shall become a state credit union as of the date it ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

SOURCES: Codes, 1930, § 4262; 1942, § 5423; Laws, 1924, ch. 177; Laws, 1960, ch. 185, § 2; Laws, 1979, ch. 307, § 10; reenacted, Laws, 1982, ch. 304, § 35; Laws, 1987, ch. 381, § 21; Laws, 1995, ch. 374, § 34; reenacted without change, Laws, 1997, ch. 368, § 32; reenacted without change, Laws, 2001, ch. 408, § 34, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in (1)(d) and (2)(c). The words “to be” were inserted between “continue responsible” so that “and shall continue responsible” now reads “and shall continue to be responsible.” The Joint Committee ratified the correction at its May 16, 2002, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

CHAPTER 14

Savings Bank Law

Article 8. Operations 81-14-351

ARTICLE 8.

OPERATIONS.

SEC.
81-14-383. Payments to successors without administration.

§ 81-14-383. Payments to successors without administration.

Any savings bank may pay to the successor of a deceased depositor, as defined in Section 91-7-322(2), without necessity of administration, any sum to the credit of the deceased not exceeding Twelve Thousand Five Hundred Dollars (\$12,500.00) upon affidavit that the deceased died leaving no will and testament and bond signed by each of the successors guaranteeing payment of any lawful debts of the deceased to the extent of that withdrawal. The receipt of acquittance of the person or persons so paid shall be a valid and sufficient release and discharge to the savings bank against all other persons and claimants for any payment so made; however, the bond is made available to any creditor for suit against the makers of the bond,

SOURCES: Laws, 1992, ch. 489, § 100; Laws, 1995, ch. 380, § 3; reenacted without change, Laws, 1997, ch. 364, § 102; reenacted and amended, Laws, 2001, ch. 457, § 102; Laws, 2003, ch. 394, § 2, eff from and after July 1, 2003.

Amendment Notes — The 2003 amendment rewrote the section to provide that the funds that savings and loan associations and savings banks may pay to the successors of deceased depositors without necessity of administration are any funds to the credit of the deceased, not just those funds in savings accounts.

CHAPTER 18**Mississippi S.A.F.E. Mortgage Act**

In General	81-18-1
Nationwide Licensing System	81-18-61

IN GENERAL

SEC.	
81-18-1.	Short title [Repealed effective July 1, 2016].
81-18-3.	Definitions [Repealed effective July 1, 2016].
81-18-5.	Exemptions [Repealed effective July 1, 2016].
81-18-7.	Mortgage broker, mortgage lender, or mortgage loan originator licensing requirement; violations [Repealed effective July 1, 2016].
81-18-8.	Enactment of local ordinances and regulations in compliance with this chapter authorized [Repealed effective July 1, 2016].
81-18-9.	Application for license [Repealed effective July 1, 2016].
81-18-11.	Mortgage loan originator surety bond requirement; form; amount [Repealed effective July 1, 2016].
81-18-13.	Authorization to collect and maintain records and process fees related to licensees; applicants to provide certain information; licensing procedures and criteria; denial [Repealed effective July 1, 2016].
81-18-14.	Prelicensing education requirements; written test requirement [Repealed effective July 1, 2016].
81-18-15.	Mortgage broker, mortgage lender and mortgage loan originator license renewal procedures; license fees; annual continuing education requirements for mortgage loan originators [Repealed effective July 1, 2016].
81-18-17.	License nontransferable and nonassignable; notification to department of change in address, location, officers, etc.; department approval

required for opening of branch office; notification to department of release of loan originator from employment; notification to department of change of qualifying individual of licensee [Repealed effective July 1, 2016].

- 81-18-19. Acquisition of interest in licensee [Repealed effective July 1, 2016].
- 81-18-21. Maintenance and investigation of business records; biennial investigation; examination fee; department authorized to examine persons suspected of conducting business requiring a license; licensee to make records and books available to commissioner and compile reports; commissioner may control access to records of licensee under investigation [Repealed effective July 1, 2016].
- 81-18-23. Annual written report by licensee [Repealed effective July 1, 2016].
- 81-18-25. Requirements for principal place of business and branch offices [Repealed effective July 1, 2016].
- 81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2016].
- 81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2016].
- 81-18-29. Promulgation of rules and regulations [Repealed effective July 1, 2016].
- 81-18-31. Regulations governing advertising of mortgage loans [Repealed effective July 1, 2016].
- 81-18-33. Required contents of individual borrower files [Repealed effective July 1, 2016].
- 81-18-35. Journal of mortgage transactions [Repealed effective July 1, 2016].
- 81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated "escrow account"; accounting for funds [Repealed effective July 1, 2016].
- 81-18-37. Suspension or revocation of license; notice to licensee [Repealed effective July 1, 2016].
- 81-18-39. Definition of "person"; violations of law; cease and desist orders; failure to comply with order; civil penalty [Repealed effective July 1, 2016].
- 81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2016].
- 81-18-41. Continuation of loan servicing under existing servicing contracts by suspended licensee [Repealed effective July 1, 2016].
- 81-18-43. Penalties for violations; report of violations; hearing on amount of penalty; judicial review [Repealed effective July 1, 2016].
- 81-18-51. Repeal of §§ 81-18-1 through 81-18-63 [Repealed effective July 1, 2016].
- 81-18-53. Applicability of chapter [Repealed effective July 1, 2016].
- 81-18-55. Activities prohibited in the course of residential mortgage loan transactions; compliance with borrower's request for information; compliance with certain requirements whether residential mortgage loan is in default or borrower is in bankruptcy [Repealed effective July 1, 2016].

§ 81-18-1. Short title [Repealed effective July 1, 2016].

This chapter shall be known and cited as the "Mississippi S.A.F.E. Mortgage Act."

SOURCES: Laws, 2000, ch. 579, § 1; reenacted without change, Laws, 2002, ch. 500, § 1; reenacted without change, Laws, 2004, ch. 364, § 1; reenacted without change, Laws, 2007, ch. 581, § 1; Laws, 2009, ch. 544, § 1; reenacted

and amended, Laws, 2010, ch. 462, § 1; reenacted without change, Laws, 2012, ch. 571, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change. The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted the section without change.

The 2009 amendment substituted “Mississippi S.A.F.E. Mortgage Licensing Act of 2009” for “Mississippi Mortgage Consumer Protection Law.”

The 2010 amendment reenacted and amended this section by substituting “ ‘Mississippi S.A.F.E. Mortgage Act’ ” for “ ‘Mississippi S.A.F.E. Mortgage Licensing Act of 2009’ .”

The 2012 amendment reenacted the section without change.

JUDICIAL DECISIONS

1. Preemption by National Bank Act.

Plaintiff consumers’ state claims under the Mississippi Consumer Loan Broker Act, Miss. Code Ann. § 81-19-1 et seq., and Mississippi Mortgage Consumer Protection Act, Miss. Code Ann. § 81-18-1 et seq., relating to defendant national bank’s

real estate lending powers granted by the National Bank Act, were preempted by that Act and by 12 C.F.R. § 34.3(a), (b). *Austin v. Provident Bank*, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 37113 (N.D. Miss. July 26, 2005).

§ 81-18-3. Definitions [Repealed effective July 1, 2016].

For purposes of this chapter, the following terms shall have the following meanings:

(a) “Application” means the submission of a borrower’s financial information in anticipation of a credit decision, whether written or computer-generated. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

(b) “Borrower” means a person who submits an application for a residential mortgage loan.

(c) “Branch” means a location of a company in or outside of the state that conducts business as a mortgage broker or mortgage lender. A location shall be considered a branch regarding mortgage broker or mortgage lender activities in any of the following:

(i) If the location is used on any type of advertisement;

(ii) If any type of record, loan file or application of the company is located at the location, with the exception of unstaffed storage facilities; or

(iii) If the activities of a mortgage loan originator occur at the location.

(d) “Commissioner” means the Commissioner of the Mississippi Department of Banking and Consumer Finance.

(e) “Commitment” means a statement by a lender required to be licensed under this chapter that sets forth the terms and conditions upon

which the lender is willing to make a particular mortgage loan to a particular borrower.

(f) “Company” means a licensed mortgage broker or mortgage lender under this chapter.

(g) “Control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and shall include “controlling,” “controlled by,” and “under common control with.”

(h) “Department” means the Department of Banking and Consumer Finance of the State of Mississippi.

(i) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(j) “Executive officer” means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person’s business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(k) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(l) “Housing finance agency” means any authority that is chartered by a state to help meet the affordable housing needs of the residents of the state, is supervised directly or indirectly by the state government, is subject to audit and review by the state in which it operates, and whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(m) “Immediate family member” means spouse, child, sibling, parent, grandparent or grandchild. This term includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(n) “Individual” means a “natural person.”

(o) “License” means a license to act as a mortgage broker or mortgage lender issued by the department under this chapter.

(p) “Licensee” means a person who is required to be licensed as a mortgage broker or mortgage lender under this chapter.

(q) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter.

For the purposes of this paragraph (q), the term “clerical or support duties” may include, after the receipt of an application:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(r) "Lock-in agreement" means a written agreement stating the terms of the lock-in fee.

(s) "Lock-in fee" means a fee collected by a licensee to be paid to a lender to guarantee an interest rate or a certain number of points on a mortgage loan from the lender.

(t) "Make a mortgage loan" means to advance funds, offer to advance funds or make a commitment to advance funds to a borrower.

(u) "Misrepresent" means to make a false statement of a substantive fact or to engage in, with intent to deceive or mislead, any conduct that leads to a false belief that is material to the transaction.

(v) "Mortgage broker" means any person who directly or indirectly or by electronic activity solicits, places or negotiates residential mortgage loans for others, or offers to solicit, place or negotiate residential mortgage loans for others that does not close residential mortgage loans in the company name, does not use its own funds, or who closes residential mortgage loans in the name of the company, and sells, assigns or transfers the loan to others within forty-eight (48) hours of the closing.

(w) "Mortgage lender" means any person who directly or indirectly or by electronic activity originates, makes, funds or purchases or offers to originate, make, or fund or purchase a residential mortgage loan or who services residential mortgage loans.

(x) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, HUD-1 Settlement Statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs and any required disclosures.

(y) "Mortgage loan originator" means an individual who:

(i) Takes a residential mortgage loan application; and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain. The term "mortgage loan originator" does not include:

(i) An individual engaged solely as a loan processor or underwriter except as otherwise provided in this chapter;

(ii) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Mississippi law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in Title 11 USCS, Section 101(53D).

(z) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(aa) “Natural person” means a human being, as distinguished from an artificial person created by law.

(bb) “Nontraditional mortgage product” means any mortgage product other than a thirty-year fixed rate mortgage.

(cc) “Offering or negotiating a residential mortgage loan” means:

(i) Presenting particular mortgage loan terms for consideration by a borrower; or

(ii) Communicating directly or indirectly with a borrower for purposes of reaching a mutual understanding about prospective loan terms;

“Offering or negotiating” does not include the following: the mere sharing of general information about a financing source; discussing hypothetical financing options, i.e., options not related to specific financing source; giving the homebuyer a list of available financing sources; discussing a buyer’s ability to afford a home; presenting or discussing generic facts or generic rate sheets; closing personal property transactions.

(dd) “Person” means a natural person, sole proprietorship, corporation, company, limited liability company, partnership or association.

(ee) “Principal” means a person who, directly or indirectly, owns or controls an ownership interest of ten percent (10%) or more in a corporation or any other form of business organization, regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devises, or any combination thereof.

(ff) “Qualifying individual” means an owner or employee of a mortgage broker or mortgage lender who submits documentation of two (2) years’ experience directly related to mortgage lending, who is licensed as a loan originator as defined in this chapter, and who resides within one hundred twenty-five (125) miles of the licensed principal place of business of the company. This individual will also be designated as the qualifying individual in the Nationwide Mortgage Licensing System and Registry.

(gg) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in subparagraph (i), (ii), (iii) or (iv) of this paragraph (gg).

(hh) “Records” or “documents” means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(ii) “Registered mortgage loan originator” means any individual who:

(i) Meets the definition of mortgage loan originator and is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration; and

(ii) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(jj) “Residential mortgage loan” means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling (as defined in Section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(kk) “Residential real estate” means any real property located in Mississippi upon which is constructed or intended to be constructed a dwelling.

(ll) “Service a mortgage loan” means the collection or remittance for another, the right to collect or remit for another, or the collection of the company’s own loan portfolio, whether or not the company originated, funded or purchased the loan in the secondary market, of payments of principal and interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(mm) “Taking an application for a residential mortgage loan” means taking an application for a residential mortgage loan means a receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower whether the application is received directly or indirectly from the borrower. However, an individual whose only

role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower does not take an application.

(nn) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

SOURCES: Laws, 2000, ch. 579, § 2; reenacted and amended, Laws, 2002, ch. 500, § 2; reenacted and amended, Laws, 2004, ch. 364, § 2; reenacted and amended, Laws, 2007, ch. 581, § 2; Laws, 2008, ch. 434, § 1; Laws, 2009, ch. 544, § 2; reenacted and amended, Laws, 2010, ch. 462, § 2; reenacted and amended, Laws, 2012, ch. 571, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment rewrote (i); substituted “twenty-five percent (25%)” for “ten percent (10%)” in (o); and added (t).

The 2004 amendment reenacted and amended the section by inserting (b) and (s), and redesignated the remaining subsections accordingly; in (j), substituting “company” for “licensee” in the first and last sentences, adding the next-to-last sentence, and inserting “which is defined as normal office procedures, not including any duties listed in the definition of ‘loan originator’” in the last sentence; and adding the last sentence in (m).

The 2007 amendment reenacted and rewrote the section to define additional terms.

The 2008 amendment, in (l), added the third sentence, and substituted “within the State of Mississippi” for “on a temporary basis” in the fourth sentence.

The 2009 amendment rewrote the section.

The 2010 amendment reenacted and amended this section, by, in the introductory paragraph in (x), substituting “or offers or negotiates terms” for “and offers or negotiates terms”; adding present (bb), redesignating the remaining subsections accordingly, and making a related internal reference update; in (ee), substituting “Qualifying individual” for “Principal officer” and making a minor stylistic change; adding (ll); and redesignating former (kk) as (mm).

The 2012 amendment made a grammatical change in (c)(iii); added (l) and redesignated the remaining subsections accordingly; updated the internal reference in (q); rewrote the introductory language in (y), which read: “‘Mortgage loan originator’ means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. The term ‘mortgage loan originator’ does not include”; in (cc)(i), inserted “particular” and substituted “for consideration by a borrower” for “to a borrower for acceptance”; in (cc)(ii), substituted “a mutual understanding” for “an understanding”; deleted (cc)(iii), which read: “Recommending, referring or steering a borrower to a particular lender or set of loan terms, in accordance with a duty to or incentive from any person other than the borrower”; added the last paragraph of (cc); made a grammatical change and internal reference update in (gg)(v); and rewrote the first sentence in (mm), which read: “‘Taking an application for a residential mortgage loan’ means receiving such application for the purpose of deciding, or influencing or soliciting the decision of another, whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, or to accept the terms offered by a borrower or prospective borrower in response to a solicitation, whether the application is received directly or indirectly from the borrower or prospective borrower.”

Cross References — Multistate licensing system, see § 81-18-61.

Licensed real estate brokers, see §§ 73-31-1 et seq.

Federal Aspects — Section 3 of the Federal Deposit Insurance Act, 12 USCS § 1813. Section 103(v) of the Truth in Lending Act, 15 USCS § 1602(v).

§ 81-18-5. Exemptions [Repealed effective July 1, 2016].

The following are exempt from the provisions of this chapter:

- (a) Registered mortgage loan originators, when acting for an entity described in Section 81-18-3(ii).
- (b) Any person who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
- (c) Any person, estate or trust who owner finances in one (1) calendar year no more than ten (10) residential mortgage loans or no more than twenty percent (20%) of his total residential units sold, whichever is greater.
- (d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator.
- (e) A depository institution, or a subsidiary that is owned and controlled by a depository institution, or an institution regulated by the Farm Credit Administration.
- (f) Any mortgage lender who holds a valid license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., and whose mortgage lending activities are limited solely to the servicing of mortgage loans that were in such mortgage lender's own loan portfolio as of December 31, 2009. For the purposes of the exemption in this paragraph (f), "servicing of mortgage loans" shall mean and include the collection of payments of principal and interest, insurance premiums, taxes and other payments required under such mortgage loans, and shall also include activities related to the collection of such payments such as collection calls whether by phone, mail, electronic means or in person, and enforcement remedies permitted by law or at equity. In no event shall the term "servicing of mortgage loans" include the renewal or reworking of the mortgage. If a mortgage loan is renewed or reworked, the lender shall be required to obtain a mortgage license in order to continue any mortgage activity described in this chapter.
- (g) Any bona fide nonprofit organization and its employees who demonstrate to the satisfaction of the commissioner through the periodic examination of the books and activities of the organization as required in Section 81-18-21, Mississippi Code of 1972, that they continually meet the following requirements, at a minimum:
 - (i) Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986;
 - (ii) Promotes affordable housing or provides homeownership education, or similar services;
 - (iii) Conducts its activities in a manner that serves public or charitable purposes;
 - (iv) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;

(v) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its client; and

(vi) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(h) Any person who is an employee of a government agency or housing finance agency who acts as a mortgage loan originator in accordance with his duties as an employee of such agency.

(i) Any person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a state-licensed loan originator or a registered loan originator. For purposes of this paragraph (i), the term “clerical or support duties” may include:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

SOURCES: Laws, 2000, ch. 579, § 3; reenacted and amended, Laws, 2002, ch. 500, § 3; reenacted and amended, Laws, 2004, ch. 364, § 3; reenacted and amended, Laws, 2007, ch. 581, § 3; Laws, 2008, ch. 434, § 2; Laws, 2009, ch. 428, § 2; Laws, 2009, ch. 544, § 3; reenacted and amended, Laws, 2010, ch. 462, § 3; reenacted and amended, Laws, 2012, ch. 571, § 3, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 2 of ch. 428, Laws of 2009, effective July 1, 2009 (approved March 23, 2009), amended this section. Section 3 of ch. 544, Laws of 2009, effective July 31, 2009 (approved April 15, 2009), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 544, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in paragraph (a) by substituting “described in Section 81-18-3(hh)” for “described in Section 81-18-3(gg).” The Joint Committee ratified the correction at its July 13, 2011, meeting.

Amendment Notes — The 2002 amendment rewrote the section.

The 2004 amendment reenacted and amended the section by rewriting the first sentence and adding the last sentence in (c); adding “and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.)” in (d); inserting “any person who engages in owner-financing; or any person engaged in the financing of a consumer loan secured by a mortgage on residential immovable property” in the first sentence of (h); deleting “for licensed mortgage companies” following “Loan originators” and inserting “(j)” following “Section 81-18-3” in the first sentence of (m); and substituting “registration” for “exemption” and making minor stylistic changes throughout the section.

The 2007 reenacted and amended the section by substituting “December 31” for “September 30” in the last paragraph of (a); deleting former (c), which provided an exemption for a wholesale lender; redesignating former (d) through (m) as present (c) through (l); deleting “mortgage” preceding “company” in (d); in (g), substituting “represents” for “representing” and “on manufactured housing and land transactions, modular homes, or any combination thereof” for “for an investment or on a whole loan basis”; adding the last sentence in (g); substituting “mortgage broker or mortgage lender” for “mortgage company” in (h); and rewriting (l).

The 2008 amendment, in (g), added the introductory clause, rewrote the first sentence following the introductory clause, and in the second sentence, inserted “aforementioned” near the beginning and added “during the licensing period provided in this chapter” at the end; in (l), in the first sentence, substituted “Section 81-18-3” for “Section 81-18-3(j),” and added “through the multistate licensing system” at the end, and in the third sentence, inserted “a pre-licensing course consisting of”; and made minor stylistic changes throughout.

The first 2009 amendment (ch. 428), inserted “the Fuller Center for Housing, Inc.,” following “Habitat for Humanity” in (j).

The second 2009 amendment (ch. 544) rewrote the section to revise the list of persons and entities that are exempt from the provisions of the act.

The 2010 amendment reenacted and amended this section by adding “or an institution regulated by the Farm Credit Administration” in (e); and adding (f).

The 2012 amendment updated the section reference in (a); rewrote (c), which read: “Any person who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence”; and added (g) through (i).

Cross References — Additional exemptions, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

Federal Aspects — Section 501(c) of the Internal Revenue Code, referred to in (k), is codified at 26 USCS § 501(c).

§ 81-18-7. Mortgage broker, mortgage lender, or mortgage loan originator licensing requirement; violations [Repealed effective July 1, 2016].

(1) No person shall transact business in this state, directly or indirectly, as a mortgage broker or mortgage lender unless he or she is licensed by the department or is a person exempted from the licensing requirements under Section 81-18-5.

(2) A violation of this section does not affect the obligation of the borrower under the terms of the mortgage loan. The department shall publish and provide for distribution of information regarding approved or revoked licenses.

(3) Every person who directly or indirectly controls a person who violates this section, including a general partner, executive officer, joint venturer, contractor, or director of the person, violates this section to the same extent as the person, unless the person whose violation arises under this subsection shows by a preponderance of evidence the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

(4) An individual, unless specifically exempted from this chapter under Section 81-18-5, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and

maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(5) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date of subsection (4) of this section shall be as follows:

(a) For all individuals other than individuals described in paragraph (b), the effective date shall be July 31, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of July 31, 2009, the effective date shall be January 1, 2011, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(6) For the purposes of implementing an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

SOURCES: Laws, 2000, ch. 579, § 4; reenacted without change, Laws, 2002, ch. 500, § 4; reenacted without change, Laws, 2004, ch. 364, § 4; reenacted and amended, Laws, 2007, ch. 581, § 4; Laws, 2009, ch. 544, § 4; reenacted without change, Laws, 2010, ch. 462, § 4; reenacted without change, Laws, 2012, ch. 571, § 4, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted and amended the section by substituting “July 1, 2000” for “the effective date of this chapter” in (1) and (3); and inserting “or registered” following “unless he or she is licensed” in (1).

The 2007 amendment reenacted and amended the section, in (1), by deleting “or natural person” following “no person,” substituting “mortgage broker or mortgage lender” for “mortgage company” and deleting “or registered as a mortgage company” following “unless he or she is licensed.”

The 2009 amendment deleted “On and after July 1, 2000” from the beginning of (1) and (3); and added (4) through (6).

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted this section without change.

Cross References — Temporary order to cease business under license issued under authority granted under subsection (6) of this section if it is determined license was erroneously granted or licensee is in violation of this chapter, see § 81-18-43.

Federal Aspects — Housing and Economic Recovery Act of 2008, Public Law 110-289.

§ 81-18-8. Enactment of local ordinances and regulations in compliance with this chapter authorized [Repealed effective July 1, 2016].

Municipalities and counties in this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this chapter. Any order, ordinance or regulation existing on July 1, 2002, or enacted on or after July 1, 2002, that conflicts with this provision shall be null and void.

SOURCES: Laws, 2002, ch. 500, § 5; reenacted without change, Laws, 2004, ch. 364, § 5; reenacted without change, Laws, 2007, ch. 581, § 5; reenacted without change, Laws, 2010, ch. 462, § 5 eff from and after July 1, 2010.

Editor's Note — This section was not reenacted by Laws of 2012, ch. 571. However, the repealer provision in Section 81-18-51 was extended by Laws of 2012, ch. 571, § 27, effective from and after July 1, 2012.

Amendment Notes — The 2004 amendment reenacted the section without change. The 2007 amendment reenacted the section without change.

The 2010 amendment reenacted the section without change.

§ 81-18-9. Application for license [Repealed effective July 1, 2016].

(1) Applicants for a license shall apply in a form as prescribed by the commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter.

(2) The mortgage broker and mortgage lender application through the Nationwide Mortgage Licensing System and Registry shall include, but is not limited to, the following:

(a) The legal name, residence and business address of the applicant and, if applicable, the legal name, residence and business address of every principal and executive officer, together with the résumé of the applicant and of every principal and executive officer of the applicant. In addition, an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act and information related to any administrative, civil or criminal findings by any governmental jurisdiction of every principal and executive officer.

(b) The legal name of the mortgage broker or mortgage lender in addition to the name under which the applicant will conduct business in the state, neither of which may be already assigned to a licensed mortgage broker or mortgage lender.

(c) The complete address of the applicant's principal place of business, branch office(s) and any other locations at which the applicant will engage in any business activity covered by this chapter.

(d) A copy of the certificate of incorporation, if a Mississippi corporation.

(e) Documentation satisfactory to the department as to a certificate of existence of authority to transact business lawfully in Mississippi from the

Mississippi Secretary of State's office, if a limited liability company, partnership, trust or any other group of persons, however organized. This paragraph does not pertain to applicants organized as an individual or as a sole proprietorship.

(f) If a foreign entity, a copy of a certificate of authority to conduct business in Mississippi and the address of the principal place of business of the foreign entity.

(g) Documentation of a minimum of two (2) years' experience directly in mortgage lending by a person named as the qualifying individual of the company. This experience shall have been within the previous four (4) years from the date of application. The qualifying individual shall also be licensed as a loan originator with the department, shall be employed at the main office address of the applicant and shall reside within one hundred twenty-five (125) miles of the main office address of the applicant. Evidence of experience shall include, where applicable:

(i) Copies of business licenses issued by governmental agencies.

(ii) Written letters of employment history of the person filing the application for at least two (2) years before the date of the filing of an application including, but not limited to, job descriptions, length of employment, names, addresses and phone numbers for past employers.

(iii) A listing of wholesale lenders with whom the applicant has done business with in the past two (2) years either directly as a mortgage broker or loan originator.

(iv) Any other data and pertinent information as the department may require with respect to the applicant, its directors, principals, trustees, officers, members, contractors or agents. A rsum alone shall not be sufficient proof of employment history.

(3) The application shall be filed on the Nationwide Mortgage Licensing System and Registry together with the following:

(a) The license fee specified in Section 81-18-15;

(b) An original or certified copy of a surety bond in favor of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising therefrom or any violation of law; and

(c) A set of fingerprints from any local law enforcement agency from the following applicants:

(i) All persons operating as a sole proprietorship that plan to conduct a mortgage brokering or lending business in the State of Mississippi;

(ii) Partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company;

(iii) Any shareholders owning ten percent (10%) or more of the outstanding shares of the corporation;

(iv) All executive officers of the applicant;

(v) All loan originators; and

(vi) The named qualifying individual of the company as required in Section 81-18-9(2) (g). The applicant shall name only one (1) individual as the qualifying individual for the State of Mississippi.

(4) Applicants for a mortgage loan originator license shall apply in a form as prescribed by the commissioner. Each such form shall contain content as set forth by rules, regulations, instructions or procedures of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter. The initial license of a mortgage loan originator shall be accompanied by a fee of One Hundred Dollars (\$100.00) to be paid to the Nationwide Mortgage Licensing System and Registry and any additional fees as required by the Nationwide Mortgage Licensing System and Registry. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a later formal vacation of that revocation shall not be deemed a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, (i) a felony in a domestic, foreign or military court during the seven-year period preceding the date of application for licensing and registration; or (ii) a crime that, if committed within this state, would constitute a felony under the laws of this state; or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. All of this is provided that any pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

(c) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this chapter.

(d) The applicant has completed the preclicensing education requirement described in Section 81-18-14(1).

(e) The applicant has passed a written test that meets the test requirement described in Section 81-18-14(7).

(f) The applicant has met the surety bond requirement as provided in Section 81-18-11.

(g) This individual must work for a Mississippi licensed company and work from the location licensed with the department. The licensed location that he or she is assigned to must be within one hundred twenty-five (125) miles of his or her residency. If the licensed loan originator resides and works in Mississippi, then he or she may work from any licensed location of the licensed company within the State of Mississippi. However, an owner of a minimum of ten percent (10%) of a licensed company or the named qualifying individual on file with the department, who is a licensed loan originator with the department, may work from any licensed location of the licensed company within the State of Mississippi in the capacity of a loan originator as described in this chapter.

(5) The loan originator shall display the current, original license issued by the department in the licensed office in which he or she is assigned.

(6) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(7) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(8) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (7)(a) and (b)(ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(9) For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection (7)(b)(i) and (ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

SOURCES: Laws, 2000, ch. 579, § 5; reenacted and amended, Laws, 2002, ch. 500, § 6; reenacted without change, Laws, 2004, ch. 364, § 6; reenacted and amended, Laws, 2007, ch. 581, § 6; Laws, 2008, ch. 434, § 3; Laws, 2009, ch. 544, § 5; reenacted and amended, Laws, 2010, ch. 462, § 6; reenacted and amended, Laws, 2012, ch. 571, § 5, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment deleted “that are or will be actively engaged in the daily operation of a mortgage brokering or lending business in the State of Mississippi” at the end of (3)(d)(iii); and deleted the last undesignated paragraph which dealt with certain corporations and financial holding companies being exempt from the fingerprint requirement of this section.

The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted and amended the section by substituting present (2)(b) for former (2)(b), which read: "The name under which the applicant will conduct business in the state"; in (g), rewriting the introductory paragraph, substituting "mortgage broker or loan originator" for "mortgage company" in (iii), and adding the last sentence of (iv); deleting former (h), which read "In lieu of documentation of two (2) years experience in mortgage lending by an applicant, documentation of passage of an examination covering mortgage lending, approved by the department"; and in (3), substituting "A completed form signed by an owner, chief executive officer or named principal officer authorizing" for "A completed and signed form authorizing" in (b), deleting "mortgage" preceding "company's breach" in (c), substituting "All persons" for "All individuals" in (d)(i), and rewriting (d)(ii) and (d)(iii).

The 2008 amendment substituted "shall be made through the multistate licensing system" for "shall be made in writing" in (1).

The 2009 amendment rewrote the section to provide the licensure requirements for mortgage loan originators.

The 2010 amendment reenacted and amended this section, by, in the introductory paragraph in (2)(g), substituting "qualifying individual" for "principal officer" everywhere it appears, and in the third sentence, substituting "Mississippi S.A.F.E. Mortgage Act" for "Mississippi S.A.F.E. Mortgage Licensing Act of 2009"; in (3)(c)(v), substituting "qualifying individual" for "principal officer" and adding the last sentence; in (4)(b), deleting "however, if such conviction occurred before the seven-year period preceding the date of application for licensing and registration, the commissioner, in his discretion, may issue or deny a mortgage loan originator license" following "licensing and registration"; and in the last sentence in (4)(g), substituting "qualifying individual" for "principal officer."

The 2012 amendment, in (2)(a), twice inserted "and executive officer" in the first sentence, and added the last sentence; in the introductory paragraph of (2)(g), deleted the third sentence, which read: "If the proof of experience is with a company that is located outside of Mississippi, then the qualifying individual shall be required to complete four (4) hours of approved courses on the Mississippi S.A.F.E. Mortgage Act", added the language beginning "shall be employed at the main office" in the present third sentence, and inserted "of experience" in the last sentence; deleted "Except as provided in this paragraph (c)" from the beginning of (3)(c); inserted present (3)(c)(iv) and redesignated former (3)(c)(iv) and (v) as (3)(c)(v) and (vi); and inserted "or expungement" in the last sentence of (4)(b).

Cross References — Multistate licensing system, see § 81-18-61.

Denial, suspension, revocation, condition or nonrenewal of license if applicant or licensee fails to meet requirements of subsection (4) of this section, see § 81-18-43.

Federal Aspects — Section 603(p) of the Fair Credit Reporting Act, 15 USCS § 1681a(p).

§ 81-18-11. Mortgage loan originator surety bond requirement; form; amount [Repealed effective July 1, 2016].

(1) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of the person who is subject to this chapter may be used in lieu of the mortgage loan originator's surety bond requirement.

(2) The surety bond shall be in a form as prescribed by the commissioner, and shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (3) of this section.

(3) The penal sum of the surety bond shall be maintained in an amount as determined by the commissioner by rule or regulation and shall be based upon loan activity during the previous year, but shall not exceed Twenty-five Thousand Dollars (\$25,000.00) for a mortgage broker or One Hundred Fifty Thousand Dollars (\$150,000.00) for a mortgage lender. For an initial applicant, the bond amount shall be set at Twenty-five Thousand Dollars (\$25,000.00) for a mortgage broker and One Hundred Fifty Thousand Dollars (\$150,000.00) for a mortgage lender.

(4) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(5) All surety bonds shall be in favor, first, of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising from the contract or any violation of law, and, second, for the payment of any civil penalties, criminal fines, or costs of investigation and/or prosecution incurred by the State of Mississippi, including local law enforcement agencies.

(6) The commissioner may promulgate rules or regulations with respect to the requirements for the surety bonds as are necessary to accomplish the purposes of this chapter.

SOURCES: Laws, 2000, ch. 579, § 6; reenacted without change, Laws, 2002, ch. 500, § 7; reenacted without change, Laws, 2004, ch. 364, § 7; reenacted and amended, Laws, 2007, ch. 581, § 7; Laws, 2009, ch. 544, § 6; reenacted without change, Laws, 2010, ch. 462, § 7; reenacted and amended, Laws, 2012, ch. 571, § 6, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change. The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted and amended the section, in (1), by deleting former (a), which provided the definition of "Correspondent lender," and redesignating former (b) and (c) as present (a) and (b), substituting "defined as any person" for "defined as any company" in (a), and adding the second and last sentences of (b); and deleting "mortgage" preceding "company" in (2).

The 2009 amendment rewrote the section to revise the requirements for surety bonds for loan originators.

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted and amended the section by substituting "section" for "subsection" at the end of (2); in (3), substituting "maintained in an amount as determined by the commissioner by rule or regulation and shall be based upon loan activity during the previous year" for "maintained in an amount that reflects the dollar amount of loans originated as determined by the commissioner" in the first sentence, and adding the last sentence; and substituting "the contract" for "contract" in (5).

§ 81-18-13. Authorization to collect and maintain records and process fees related to licensees; applicants to provide certain information; licensing procedures and criteria; denial [Repealed effective July 1, 2016].

(1) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(2) In connection with an application for licensing as a mortgage broker or lender under this chapter, the required stockholders, owners, directors and executive officers of the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the individual's identity, including:

(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(3) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (2)(a) and (b)(ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(4) For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection (2)(b)(i) and (ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(5) Upon receipt of an application for licensure, which shall include the required set of fingerprints from any local law enforcement agency, the department or designated third party shall conduct such an investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation; that the applicant demonstrates reasonable financial responsibility; and that the applicant has

reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly.

(6) The department shall not license an applicant unless it is satisfied that the applicant will operate its mortgage activities in compliance with the laws, rules and regulations of this state and the United States.

(7) The department shall not license any mortgage broker or mortgage lender unless the applicant meets the requirements of Section 81-18-11.

(8) The department shall not issue a license if it finds that the applicant, or any person who is a director, executive officer, partner or qualifying individual of the applicant, has been convicted of: (a) a felony in any jurisdiction; or (b) a crime that, if committed within this state, would constitute a felony under the laws of this state; or (c) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. For the purposes of this chapter, a person shall be deemed to have been convicted of a crime if the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or has been found guilty of a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained or has received an expungement of the conviction.

(9) The department shall deny a license if it finds that the applicant has had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of that revocation shall not be deemed a revocation.

(10) Within thirty (30) days after receipt of a completed application, final verification from the Department of Public Safety and/or FBI, and payment of licensing fees prescribed by this chapter, the department shall either grant or deny the request for license. However, if the Federal Financial Institutions Examination Council (FFIEC) prescribes a lesser period of time within which the department shall either grant or deny the request for license, then that time limitation shall supersede this subsection.

(11) A person shall not be indemnified for any act covered by this chapter or for any fine or penalty incurred under this chapter as a result of any violation of this chapter or regulations adopted under this chapter, due to the legal form, corporate structure, or choice of organization of the person including, but not limited to, a limited liability corporation.

SOURCES: Laws, 2000, ch. 579, § 7; reenacted and amended, Laws, 2002, ch. 500, § 8; reenacted without change, Laws, 2004, ch. 364, § 8; reenacted and amended, Laws, 2007, ch. 581, § 8; Laws, 2009, ch. 544, § 7; reenacted and amended, Laws, 2010, ch. 462, § 8; reenacted and amended, Laws, 2012, ch. 571, § 7, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a publishing error in (4), (5), (7) and (8). The words “this act” were changed to “this chapter.” The Joint Committee ratified the correction at its June 3, 2003, meeting.

Amendment Notes — The 2002 amendment deleted “and that the applicant has and maintains a place of business in this state” at the end of (1); and in (4), rewrote and redesignated as (4)(a) and (4)(b) the language in the first sentence, which formerly read “a felony involving moral turpitude in any jurisdiction or of a crime that, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state,” and added (4)(c).

The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted and amended the section by inserting “or designated third party” in (1); deleting “company” following “mortgage” in (2); substituting “mortgage broker or mortgage lender” for “mortgage company” in (3); in (4), rewriting the first sentence, and adding the second and third sentences; in (5), inserted “or a designated third party” twice in the first sentence, and adding “except as provided ... loan originators” at the end of the next-to-last sentence; and deleting “certificate” following registration both times it appears in (6).

The 2009 amendment rewrote the section to revise the licensure requirements for mortgage brokers and mortgage lenders.

The 2010 amendment reenacted and amended this section by substituting “qualifying individual” for “principal officer” in the first sentence in (8).

The 2012 amendment reenacted and amended the section by substituting “directors and executive officers” for “directors, officers” in the introductory paragraph of (2); and in (8), inserting “executive” in the first sentence, and adding “or has received an expungement of the conviction” at the end.

Cross References — Multistate licensing system, see § 81-18-61.

Federal Aspects — Section 603(p) of the Fair Credit Reporting Act, 15 USCS § 1681a(p).

§ 81-18-14. Prelicensing education requirements; written test requirement [Repealed effective July 1, 2016].

(1) In order to meet the prelicensing education requirement referred to in Section 81-18-9(4)(d), a person shall complete at least twenty (20) hours of education approved in accordance with subsection (2) of this section, which shall include at least:

- (a) Three (3) hours of federal law and regulations;
- (b) Three (3) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;
- (c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (d) Four (4) hours of education related to the Mississippi S.A.F.E. Mortgage Act.

(2) For the purposes of subsection (1) of this section, prelicensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is

affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in Mississippi.

(6) A person previously licensed under this chapter who applies to be licensed again on or after July 1, 2009, must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

(7) In order to meet the written test requirement for mortgage loan originators referred to in Section 81-18-9(4)(e), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(8) A written test shall not be treated as a qualified written test for purposes of subsection (7) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (a) Ethics;
- (b) Federal law and regulation pertaining to mortgage origination;
- (c) State law and regulation pertaining to mortgage origination; and
- (d) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(9) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(10)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to questions.

(b) An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test.

(c) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

SOURCES: Laws, 2009, ch. 544, § 8; reenacted and amended, Laws, 2010, ch. 462, § 9; reenacted without change, Laws, 2012, ch. 571, § 8, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment reenacted and amended this section by substituting “Mississippi S.A.F.E. Mortgage Act” for “Mississippi S.A.F.E. Mortgage Licensing Act of 2009” in (1)(d).

The 2012 amendment reenacted the section without change.

§ 81-18-15. Mortgage broker, mortgage lender and mortgage loan originator license renewal procedures; license fees; annual continuing education requirements for mortgage loan originators [Repealed effective July 1, 2016].

(1) Each mortgage broker and mortgage lender license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license to operate as a mortgage broker or mortgage lender, the applicant shall pay through the Nationwide Mortgage Licensing System and Registry to the commissioner a license fee of Seven Hundred Fifty Dollars (\$750.00); however, if the initial mortgage broker or mortgage lender license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. Upon the expiration of the initial license, the licensee shall pay an annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00) on or before December 31 of each year. If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before commencing business or before the expiration of the person’s current license, as the case may be, then the person shall be liable for the initial license fee, which is Seven Hundred Fifty Dollars (\$750.00), plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department. If the application is withdrawn or denied, the application fee along with any other applicable fee are not refundable.

(2) The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 81-18-9(4).

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 81-18-15(5).

(c) The mortgage loan originator has paid all required fees for renewal of the license. Annual renewals of this license shall require a fee of Fifty Dollars (\$50.00).

(3) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may

adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry. If the renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. However, if the initial loan originator license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. If the renewal fee is not paid before the expiration date of the license, the mortgage loan originator shall be liable for the initial license fee, which is One Hundred Dollars (\$100.00), in order to renew.

(4) Any licensee making timely and proper application for a license renewal shall be permitted to continue to operate under its existing license until its application is approved or rejected, but shall not be released from or otherwise indemnified for any act covered by this chapter or for any penalty incurred under this chapter as a result of any violation of this chapter or regulations adopted under this chapter, pending final approval or disapproval of the application for the license renewal.

(5) In order to meet the annual continuing education requirements referred to in Section 81-18-15(2) (b), a licensed mortgage loan originator shall complete at least twelve (12) hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three (3) hours of federal law and regulations;

(b) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) Two (2) hours of education related to the Mississippi S.A.F.E. Mortgage Act.

(6) For the purposes of subsection (5) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(7) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(8) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(9) A licensed mortgage loan originator:

(a) Except for Section 81-18-15(3) and subsection (13) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education, with the exception of the course concerning the Mississippi S.A.F.E. Mortgage Act.

(10) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(11) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (5) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Mississippi.

(12) A licensed mortgage loan originator who later becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(13) A person meeting the requirements of Section 81-18-15(2)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the commissioner.

SOURCES: Laws, 2000, ch. 579, § 8; reenacted and amended, Laws, 2002, ch. 500, § 9; reenacted and amended, Laws, 2004, ch. 364, § 9; reenacted and amended, Laws, 2007, ch. 581, § 9; Laws, 2008, ch. 434, § 4; Laws, 2009, ch. 544, § 9; reenacted and amended, Laws, 2010, ch. 462, § 10; reenacted without change, Laws, 2012, ch. 571, § 9, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment added the third and fourth sentences in (3).

The 2004 amendment reenacted and amended the section by adding the last sentence in (1); and substituting “Bankers” for “Brokers” in the last sentence of (3).

The 2007 amendment reenacted and amended the section, in (1), by inserting “to operate as a mortgage broker or mortgage lender” and substituting “December 31” for August 31” in the first sentence, and deleting “thirty (30) days after August 31” following “unpaid,” and substituting “December 31” for September 30” in the second sentence; and rewriting (3).

The 2008 amendment inserted “through the multistate licensing system” in the second sentence of (1).

The 2009 amendment rewrote the section to provide the license renewal and continuing education requirements for loan originators.

The 2010 amendment reenacted and amended this section by rewriting the second and third sentences in (1); adding the next-to-last sentence in (3); and in (5)(d) and (9)(b), substituting “Mississippi S.A.F.E. Mortgage Act” for “Mississippi S.A.F.E. Mortgage Licensing Act of 2009.”

The 2012 amendment reenacted the section without change.

Cross References — Multistate licensing system, see § 81-18-61.

Denial, suspension, revocation, condition or nonrenewal of license if applicant or licensee fails to meet requirements of subsection (2) of this section, see § 81-18-43.

§ 81-18-17. License nontransferable and nonassignable; notification to department of change in address, location, officers, etc.; department approval required for opening of branch office; notification to department of release of loan originator from employment; notification to department of change of qualifying individual of licensee [Repealed effective July 1, 2016].

(1) A license may not be transferred or assigned.

(2) No licensee shall transact business under any name other than that designated in the license.

(3) A licensed mortgage broker or mortgage lender shall notify the department through the Nationwide Mortgage Licensing System and Registry of any change in the address of its principal place of business or of any change in the address of an additional licensed branch location within thirty (30) days of the change.

(4) No licensee shall open a branch office in this state or a branch office outside this state from which the licensee has direct contact with consumers regarding origination or brokering Mississippi residential property, without prior approval of the department. An application for any branch office shall be made through the Nationwide Mortgage Licensing System and Registry on a form prescribed by the department, which shall include at least evidence of compliance with subsection (1) of Section 81-18-25 as to that branch and shall be accompanied by payment of a nonrefundable application fee of One Hundred Dollars (\$100.00) and at least one (1) loan originator application licensed at that branch office. The application shall be approved unless the department finds that the applicant has not conducted business under this chapter in accordance with law. Each branch office that currently holds a branch license shall renew that branch license before the expiration date of the main company license, on or before December 31; however, if the initial branch license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. The license renewal shall be on a form prescribed by the department with a nonrefundable renewal application fee of Twenty-five Dollars (\$25.00). If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If the renewal fee is not paid before the expiration date of the license, the branch shall be liable for the initial license fee, which is One Hundred Dollars (\$100.00), in order to renew.

(5) A licensed mortgage broker or mortgage lender shall notify the department within thirty (30) days by submitting a sponsorship removal in the Nationwide Mortgage Licensing System and Registry when a loan originator is released from its employment. In addition, the licensed mortgage broker or mortgage lender shall notify the department within thirty (30) days through the Nationwide Mortgage Licensing System and Registry when there is a change of the qualifying individual of the licensee.

SOURCES: Laws, 2000, ch. 579, § 9; reenacted and amended, Laws, 2002, ch. 500, § 10; reenacted and amended, Laws, 2004, ch. 364, § 10; reenacted and amended, Laws, 2007, ch. 581, § 10; Laws, 2008, ch. 434, § 5; Laws, 2009, ch. 544, § 10; reenacted and amended, Laws, 2010, ch. 462, § 11; reenacted and amended, Laws, 2012, ch. 571, § 10, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment deleted “in Mississippi” following “business” in (1); and inserted “in this state or a branch office outside this state from which the licensee has direct contact with Mississippi consumers regarding origination or brokering Mississippi property,” in the first sentence of (6).

The 2004 amendment reenacted and amended the section by adding the last two sentences in (6).

The 2007 amendment reenacted and amended the section, in (1), by inserting “or registration,” “the registrant’s assigned licensed location” and “or registrant”; rewriting (2); inserting “or registration” in (3); inserting “or registrant” and “or registration” in (4); inserting “or registered loan originator” twice in (5); and in (6), in the first sentence, deleting “Mississippi” following “direct contact with,” inserting “residential,” and adding “and at least one (1) loan originator application registered at that branch office” at the end, inserting “complete” in the third sentence, and substituting “December 31” for “September 30” in the next-to-last sentence.

The 2008 amendment substituted “shall be made through the multistate licensing system” for “shall be made in writing” in the second sentence of (6).

The 2009 amendment deleted “or registration” following “license” in (1), (2), (3) and (4) and “or registrant” following “licensee” in (1), (2) and (4); substituted “licensee’s assigned” for “registrant’s assigned” in (1); substituted “licensed loan originator” for “registered loan originator” both times it appears in (5); and in (6), substituted “through the Nationwide Mortgage Licensing System and Registry” for “through the multistate licensing system” in the second sentence, and added the last two sentences.

The 2010 amendment reenacted and amended this section by rewriting (5); in (6), deleting the former fourth and fifth sentences, which read: “The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within thirty (30) days of the date that the complete application is received by the department. After approval, the applicant shall give written notice to the department within ten (10) days of the commencement of business at the branch office,” and in the present fourth sentence, adding the language beginning “however, if the initial branch license is issued” through to the end; and adding (7).

The 2012 amendment deleted former (1), which read: “Each license issued under this chapter shall state the address of the licensee’s principal place of business, the licensee’s assigned licensed location and the name of the licensee”; and deleted former (2), which read: “A licensee shall post the original license in a conspicuous place in the assigned place of business of the licensee” and redesignated the remaining subsections accordingly.

Cross References — Multistate licensing system, see § 81-18-61.

§ 81-18-19. Acquisition of interest in licensee [Repealed effective July 1, 2016].

(1) Except as provided in this section, no person shall acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business under this chapter unless it first files an application in accordance with the requirements prescribed in Section 81-18-9.

(2) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it is satisfied

and finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have provided its surety bond and have the character, reputation and experience to warrant belief that the business will be operated fairly and in accordance with the law. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(3) A decision of the department denying a license, original or renewal, shall be conclusive, except that the applicant may seek judicial review in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(4) The provisions of this section do not apply to the following, subject to notification as required in this section:

(a) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed under this chapter or exempt from this chapter under Section 81-18-5.

(b) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee.

(c) The acquisition of an interest in a licensee by a person by bequest, devise, gift or survivorship or by operation of law.

(5) A person acquiring an interest in a licensee in a transaction that is requesting exemption from filing an application for approval of the application shall send a written request to the department for an exemption within thirty (30) days before the closing of the transaction.

SOURCES: Laws, 2000, ch. 579, § 10; reenacted and amended, Laws, 2002, ch. 500, § 11; reenacted and amended, Laws, 2004, ch. 364, § 11; reenacted without change, Laws, 2007, ch. 581, § 11; Laws, 2008, ch. 434, § 6; Laws, 2009, ch. 544, § 11; reenacted without change, Laws, 2010, ch. 462, § 12; reenacted and amended, Laws, 2012, ch. 571, § 11, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment, in (1), deleted “on and after July 1, 2000” following “section” near the beginning of the subsection, substituted “twenty-five percent (25%)” for “ten percent (10%)” twice, substituted “files an application in accordance with the requirements prescribed in Section 81-18-9” for “does all of the following” at the end of the former introductory language, and deleted (1)(a), (1)(b), and (1)(c); deleted the former second sentence in (2); and substituted “this chapter” for “Sections 81-18-1 through 81-18-51” following “exempt from” in (4)(a).

The 2004 amendment reenacted and amended the section by inserting “registered under this chapter or” in (4)(a) following “consolidation by or with a person.”

The 2007 amendment reenacted the section without change.

The 2008 amendment substituted “ten percent (10%)” for “twenty-five percent (25%)” twice in (1).

The 2009 amendment deleted “or registration” following “denying a license” in (3); substituted “person licensed under this chapter” for “person registered under this chapter” in (4)(a); and made a minor stylistic change.

The 2010 amendment reenacted the section without change.

The 2012 amendment substituted “devise” for “device” in (4)(c).

§ 81-18-21. Maintenance and investigation of business records; biennial investigation; examination fee; department authorized to examine persons suspected of conducting business requiring a license; licensee to make records and books available to commissioner and compile reports; commissioner may control access to records of licensee under investigation [Repealed effective July 1, 2016].

(1) Any person required to be licensed under this chapter shall maintain in its offices, or such other location as the department shall permit, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this chapter and the rules and regulations adopted by the department under this chapter. These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved and may represent historical data for three (3) years preceding the date of the last license application date forward. The books, accounts and records shall be kept in a secure location under conditions that will not lead to their damage or destruction. If the licensee wishes to keep the files in a location other than the location listed on the license, then the licensee first must submit a written request on a form designated by the department and gain written approval from the commissioner before storing the files at an off-site secure location.

(2) To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

(3) The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter including, without limitation, the conduct of business without a license as required under this chapter.

(4) Each licensee, individual or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this chapter. The

commissioner shall have access to those books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this chapter concerning their business.

(5) Each licensee, individual or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including, but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (c) Such other information deemed necessary to carry out the purposes of this section.

(6) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except under a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(7) The commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in Section 81-18-63.

(8) Examinations and investigations conducted under this chapter and information obtained by the department, except as provided in subsection (7) of this section, in the course of its duties under this chapter are confidential.

(9) In the absence of malice, fraud or bad faith a person is not subject to civil liability arising from the filing of a complaint with the department, furnishing other information required by this chapter, information required by the department under the authority granted in this chapter, or information voluntarily given to the department related to allegations that a licensee or prospective licensee has violated this chapter.

(10) In order to carry out the purposes of this section, the commissioner may:

- (a) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
- (b) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this chapter in the course of that part of the examination covering the same general subject

matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.

(11) The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without that authority.

(12) No licensee, individual or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

SOURCES: Laws, 2000, ch. 579, § 11; reenacted and amended, Laws, 2002, ch. 500, § 12; reenacted and amended, Laws, 2004, ch. 364, § 12; reenacted and amended, Laws, 2007, ch. 581, § 12; Laws, 2009, ch. 544, § 12; reenacted without change, Laws, 2010, ch. 462, § 13; reenacted without change, Laws, 2012, ch. 571, § 12, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment added the third sentence in (1).

The 2004 amendment reenacted and amended the section by adding the last sentence in (1); and substituting “Three Hundred Dollars (\$300.00)” for “Two Hundred Dollars (\$200.00)” and “Six Hundred Dollars (\$600.00)” for “Three Hundred Dollars (\$300.00)” in (2).

The 2007 amendment reenacted and amended the section, in the last sentence of (1), by substituting “licensee wishes” for “mortgage company wishes,” deleting “or registration certificate” following “listed on the license,” substituting “licensee first must” for “company first must,” and substituting “at an off-site secure location” for “in a different location.”

The 2009 amendment deleted “or registration” following “license” both times it appears in (3); added (4), (5) and (6); redesignated former (4) through (6) as present (7) through (9); rewrote (7); substituted “subsection (7)” for “subsection (4)” in (8); and added (10) through (12).

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

§ 81-18-23. Annual written report by licensee [Repealed effective July 1, 2016].

(1) Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(2) The department, in its discretion, may relieve any company from the payment of any penalty, in whole or in part, for good cause.

(3) If a company fails to pay a penalty from which it has not been relieved, the department may maintain an action at law to recover the penalty.

(4) Within fifteen (15) days of the occurrence of any of the following events, a company shall file with the Nationwide Mortgage Licensing System and Registry the applicable change in the disclosure questions and shall file a written report with the commissioner describing the event and its expected impact on the activities of the company in this state:

(a) The filing for bankruptcy or reorganization by the company;

(b) The institution of revocation or suspension proceedings against the company by any state or governmental authority;

(c) Any felony indictment of the company or any of its directors, executive officers, qualifying individual or loan originators;

(d) Any felony conviction of the company or any of its directors, executive officers, qualifying individual or loan originators; or

(e) Any misdemeanor conviction, in which fraud is an essential element, of any of the company's directors, executive officers, qualifying individual or loan originators.

(5) If the company, owner, qualifying individual of a company or licensed loan originator is involved in a civil action concerning the company, then the person shall notify the commissioner in writing within sixty (60) days after the initial filing of the civil action.

SOURCES: Laws, 2000, ch. 579, § 12; reenacted without change, Laws, 2002, ch. 500, § 13; reenacted and amended, Laws, 2004, ch. 364, § 13; reenacted and amended, Laws, 2007, ch. 581, § 13; Laws, 2008, ch. 434, § 7; Laws, 2009, ch. 544, § 13; reenacted and amended, Laws, 2010, ch. 462, § 14; reenacted without change, Laws, 2012, ch. 571, § 13, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted and amended the section by substituting “company” for “licensee” and “January 31” for “April 1” throughout the section; inserting “December 31” preceding “information that the department” in (1); substituting “Ten Dollars (\$10.00)” for “Fifty Dollars (\$50.00)” and “Two Hundred Dollars (\$200.00)” for “Five Hundred Dollars (\$500.00)” in (2); and adding (5) and (6).

The 2007 amendment reenacted and amended the section by substituting “March 31” for “January 31” in (1) and for “January 31” the first time it appears in (2); in (5), inserting “principal officer” in (c) and (d), and adding (e); in (6), inserting “company” the first time it appears, “officer” and “or registered loan originator,” and substituting “the person” for “he”; and making minor stylistic changes.

The 2008 amendment substituted “March” for “January” following “for each day after” in (2).

The 2009 amendment rewrote (1); deleted former (2), which provided a date for filing the report required by the section and a penalty for filing after that date; redesignated former (3) through (6) as present (2) through (5); and substituted “licensed loan originator” for “registered loan originator” in (5).

The 2010 amendment reenacted and amended the section, by, in the introductory paragraph in (4), inserting “with the Nationwide Mortgage Licensing System and Registry the applicable change in the disclosure questions and shall file”; and in (4)(c) through (4)(e) and in (5), substituting “qualifying individual” for “principal officer.”

The 2012 amendment reenacted the section without change.

§ 81-18-25. Requirements for principal place of business and branch offices [Repealed effective July 1, 2016].

(1) Each principal place of business and branch office in the state shall meet all of the following requirements:

(a) Be in compliance with local zoning ordinances and have posted any licenses required by local government agencies. It is the responsibility of the licensee to meet local zoning ordinances and obtain the required occupa-

tional licenses; however, zoning cannot be residential. If there is no zoning in the area, then the person shall submit to the department a letter from the city or county stating that there is no zoning.

(b) Consist of at least one (1) secure enclosed room or secure building of stationary construction in which negotiations of mortgage loan transactions may be conducted in privacy. Stationary construction does not include the use of portable buildings. If there is no zoning in the requested location and the property is used for residential purposes, then the person shall utilize an enclosed room with a dedicated outside door.

(c) Display a permanent sign outside the place of business readily visible to the general public, unless the display of sign violates local zoning ordinances or restrictive covenants. The sign must contain the name of the licensee and the words "Mississippi Licensed Mortgage Company" or, if the initial license is obtained after July 1, 2007, the words "Licensed by the Mississippi Department of Banking and Consumer Finance." The signage shall also contain the Nationwide Mortgage Licensing System and Registry Unique Identifier issued to that particular licensed location.

(2) If one (1) of the following is correct, then that location shall be licensed as a mortgage broker or mortgage lender under this chapter and not as a branch:

(a) It is a separate entity operating as an independent business or mortgage operation which is not under the direct control, management supervision and responsibility of the licensee;

(b) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management and supervision of the licensee;

(c) All assets and liabilities of the branch are not assets and liabilities of the licensee, and all income and expenses of the branch are income and expenses of the licensee and properly accounted for in the financial records and tax returns of the licensee; or

(d) All practices, policies and procedures, including, but not limited to, those relating to employment and operations, are not originated and established by the licensee or registered company and are not applied consistently to the principal place of business and all branches.

Nothing in this subsection (2) shall affect or change, or be construed as affecting or changing, the existing statutory law and common law on agency, principal and agent, independent contractors, and parent and subsidiary companies.

SOURCES: Laws, 2000, ch. 579, § 13; reenacted and amended, Laws, 2002, ch. 500, § 14; reenacted and amended, Laws, 2004, ch. 364, § 14; reenacted and amended, Laws, 2007, ch. 581, § 14; Laws, 2009, ch. 544, § 14; reenacted without change, Laws, 2010, ch. 462, § 15; reenacted and amended, Laws, 2012, ch. 571, § 14, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment deleted former subsection (1); redesignated former subsections (2), (3), and (4), as present subsections (1), (2), and (3); and in (1), deleted "also" following "state" in the introductory language, inserted "secure"

preceding “enclosed” and preceding “building” and added the second sentence in (1)(b), and inserted “or Mississippi Supervised Mortgage Company” at the end of present (1)(c).

The 2004 amendment reenacted and amended the section by adding (4).

The 2007 amendment reenacted and amended the section, in (1), by adding “however, zoning cannot be residential” at the end of the next-to-last sentence and adding the last sentence of (a), adding the last sentence of (b), and adding “or, if the initial . . . Consumer Finance” at the end of (c); substituting “the original license” for “a copy of its current license” in (2); inserting “original” in (3); and in (4), substituting “mortgage broker or mortgage lender” for “mortgage company” in the introductory paragraph, and deleting “or registered company” following “licensee” both times it appears in (b).

The 2009 amendment deleted “Mississippi Registered Mortgage Company” following “Mississippi Licensed Mortgage Company” in (1)(c); substituted “person licensed” for “person registered” and “original license” for “original registration” in (3); and substituted “principal place of business” for “main office” in (d).

The 2010 amendment reenacted the section without change.

The 2012 amendment added the last sentence in (2)(c); deleted former (2), which read: “Each licensee shall prominently display the original license at the principal place of business and each branch office”; deleted former (3), which read: “Each person licensed under this chapter shall prominently display his or her original license in the office where the person is employed”; redesignated former (4) as (2), and made a related internal reference update in the last paragraph.

§ 81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2016].

(1) No person required to be licensed under this chapter shall:

(a) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Misrepresent to or conceal from an applicant for a mortgage loan or mortgagor, material facts, terms or conditions of a transaction to which the licensee is a party.

(c) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(d) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

(e) Improperly refuse to issue a satisfaction of a mortgage loan.

(f) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan, such as money, funds, deposits, checks, drafts, mortgages or other documents or things of value that have come into the possession of the licensee and that are not the property of the licensee, or that the licensee is not by law or at equity entitled to retain.

(g) Engage in any transaction, practice, or course of business that is not in good faith, or that operates a fraud upon any person in connection with the making of or purchase or sale of any mortgage loan, including the use of correction fluid on any document associated with the mortgage loan.

(h) Engage in any fraudulent residential mortgage underwriting practices, which include, but are not limited to, making in any manner, any false

or deceptive statement or representation including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.

(i) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower.

(j) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing.

(k) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower’s property. For purposes of this paragraph, there is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower’s property if any of the following circumstances are proven:

(i) Lack of substantial benefit to the borrower;

(ii) The probability that full payment of the loan cannot be made by the borrower;

(iii) That the person has made a significant proportion of loans foreclosed under similar circumstances;

(iv) That the person has provided an extension of credit or collected a mortgage debt by extortion;

(v) That the person does business under a trade name that misrepresents or tends to misrepresent that the person is a bank, trust company, savings bank, savings and loan association, credit union, or insurance company.

(l) Charge or collect any direct payment, compensation or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall that direct payment, compensation or advance fee exceed seven and ninety-five one-hundredths percent (7.95%) of the original principal amount of the loan, and any such direct payments, compensation or advance fees shall be included in all annual percentage rate (APR) calculations if required under Regulation Z of the federal Truth in Lending Act (TILA). A direct payment, compensation or advance fee as defined in this section shall not include:

(i) Any direct payment, compensation or advance fee collected by a licensed mortgage broker or mortgage lender to be paid to a nonrelated third party;

(ii) Any indirect payment to a licensed mortgage broker or mortgage lender by a lender if those fees are not required to be disclosed under the Real Estate Settlement Procedures Act (RESPA);

(iii) Any indirect payment or compensation by a lender to a licensee required to be disclosed by the licensee under RESPA, provided that the payment or compensation is disclosed to the borrower by the licensee on a

good faith estimate of costs, is included in the APR if required under Regulation Z of TILA, and is made pursuant to a written agreement between the licensee and the borrower as may be required by Section 81-18-33;

(iv) A fee not to exceed one percent (1%) of the principal amount of a loan for construction, provided that a binding commitment for the loan has been obtained for the prospective borrower; or

(v) An advance fee, known as a lock-in fee, collected by a licensee to be paid to a lender to lock in an interest rate and/or a certain number of points on a mortgage loan from the lender as provided in Section 81-18-28.

(m) Pay to any person not licensed under the provisions of this chapter any commission, bonus or fee in connection with arranging for or originating a mortgage loan for a borrower, except that a licensed loan originator may be paid a bonus, commission, or fee by his or her licensed employer.

(n) Refuse to provide the loan payoff within three (3) business days of an oral or written request from a borrower or third party. Proof of authorization of the borrower shall be submitted for a third-party request.

(o) Knowingly withhold, extract, remove, mutilate, destroy or conceal any books, records, computer records or other information which are required by law to be disclosed.

(p) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.

(q) Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations under that law, applicable to any business authorized or conducted under this chapter.

(r) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.

(s) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting.

(u) Fail to make disclosures as required by this chapter and any other applicable state or federal law including regulations under that law.

(v) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

(2) A licensed mortgage broker or mortgage lender shall only broker a residential mortgage loan to a mortgage broker or mortgage lender licensed under this chapter or to a person exempt from licensure under the provisions of this chapter.

(3) No nonbanking entity may use any sign or handwritten or printed paper indicating that it is a bank, savings bank, trust company or place of banking. No entity may use the word “bank,” “savings bank,” “banking,” “banker” or “trust company,” or the equivalent or plural of any of these words, in connection with any business other than that of banking. This subsection does not prohibit a person from acting in a trust capacity.

(4) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(5) No unlicensed Mississippi location of a Mississippi licensed mortgage broker or mortgage lender may advertise mortgage services if the unlicensed location is more than fifty (50) miles from a licensed Mississippi location.

SOURCES: Laws, 2000, ch. 579, § 14; reenacted and amended, Laws, 2002, ch. 500, § 15; reenacted and amended, Laws, 2004, ch. 364, § 15; Laws, 2006, ch. 451, § 1; reenacted and amended, Laws, 2007, ch. 581, § 15; Laws, 2009, ch. 544, § 15; reenacted without change, Laws, 2010, ch. 462, § 16; reenacted without change, Laws, 2012, ch. 571, § 15, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment redesignated the formerly undesignated paragraph as present subsection (1); added (1)(k); and added (2).

The 2004 amendment reenacted and amended the section by substituting “registered” for “not exempt” in (1)(k); and inserting “or registered” following “company licensed” in (2).

The 2006 amendment added (j)(v) and made minor stylistic changes.

The 2007 amendment reenacted and amended the section by, in (1), substituting “licensee” for “mortgage company” everywhere it appears in (b) and (e); adding “including ... mortgage loan” at the end of (f); in (j), substituting “mortgage broker or mortgage lender” for “mortgage company” in (i) and (ii), substituting “licensee” for “licensed mortgage company” everywhere it appears in (iii), and inserting “known as a lock-in fee” and substituting “licensee” for “licensed or registered mortgage company” in (v); and adding (m); rewriting (2); and adding (3) and (4).

The 2009 amendment, in (1), deleted “or registered” following “licensed” in the introductory language, rewrote (a), added (d), redesignated former (d) through (g) as present (e) through (h), added (i), redesignated former (h) through (m) as present (j) through (o), and added (p) through (v); and added (5).

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

Federal Aspects — Regulation Z of the Truth in Lending Act is codified at 12 CFR Part 226.

The Truth in Lending Act is codified at 15 USCS §§ 1601 et seq.

JUDICIAL DECISIONS

1.5. Violation not shown.

The amount of compensation allowable for a mortgage broker is not to exceed 7.95 percent; a home buyer's claim against a bank under the Real Estate Settlement Procedures Act, 12 U.S.C.S. § 2601 et

seq., failed to show any specific violation of the act, and therefore, the bank was entitled to summary judgment. *Tidwell v. Homestar Real Estate Servs.*, 290 F. Supp. 2d 729 (S.D. Miss. 2003).

§ 81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2016].

(1) A licensed mortgage broker or mortgage lender may enter into lock-in agreements and collect a lock-in fee from a borrower on the lender's behalf. The lock-in fee shall not exceed the following:

(a) No fee may be collected to lock in for sixty (60) days or less;

(b) One percent (1%) of the principal amount of the loan to lock in for more than sixty (60) days, but not to exceed one hundred eighty (180) days;

(c) One and one-half percent (1-½%) of the principal amount of the loan to lock in for more than one hundred eighty (180) days, but not to exceed two hundred seventy (270) days; or

(d) Two percent (2%) of the principal amount of the loan to lock in for more than two hundred seventy (270) days.

(2) Before the collection of a lock-in fee, the applicant must be provided a copy of the lock-in fee agreement. This agreement shall contain at least the following:

(a) Identification of the property that is being purchased with the loan;

(b) The principal amount and term of the loan;

(c) The initial interest rate and/or points, whether the interest rate is fixed or variable, and if variable, the index and margin, or the method by which an interest rate change for the mortgage loan will be calculated;

(d) The amount of the lock-in fee, whether the fee is refundable or nonrefundable, the time by which the lock-in fee must be paid to the lender, and if the fee is refundable, the terms and conditions necessary to obtain the refund; and

(e) The length of the lock-in period that the agreement covers.

SOURCES: Laws, 2006, ch. 451, § 2; reenacted and amended, Laws, 2007, ch. 581, § 16; reenacted without change, Laws, 2010, ch. 462, § 17; reenacted without change, Laws, 2012, ch. 571, § 16, eff from and after July 1, 2012.

Amendment Notes — The 2007 amendment reenacted and amended the section by substituting “A licensed mortgage broker or mortgage lender” for “A mortgage broker” in (1).

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

Cross References — Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons, see § 81-18-27.

§ 81-18-29. Promulgation of rules and regulations [Repealed effective July 1, 2016].

The commissioner shall promulgate those rules and regulations, not inconsistent with law, necessary for the enforcement of this chapter.

SOURCES: Laws, 2000, ch. 579, § 15; reenacted without change, Laws, 2002, ch. 500, § 16; reenacted without change, Laws, 2004, ch. 364, § 16; reenacted and amended, Laws, 2007, ch. 581, § 17; reenacted without change, Laws, 2010, ch. 462, § 18; reenacted without change, Laws, 2012, ch. 571, § 17, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change. The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted and amended the section by substituting “The commissioner” for “The department.”

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

§ 81-18-31. Regulations governing advertising of mortgage loans [Repealed effective July 1, 2016].

The department shall promulgate regulations governing the advertising of mortgage loans, including, but not limited to, the following requirements:

(a) That all advertisements for loans regulated under this chapter may not be false, misleading or deceptive. No person whose activities are regulated under this chapter may advertise in any manner so as to indicate or imply that its interest rates or charges for loans are “recommended,” “approved,” “set” or “established” by the State of Mississippi;

(b) That all licensees shall maintain a copy of all advertisements citing interest rates or payment amounts primarily disseminated in this state and shall attach to each advertisement documentation that provides corroboration of the availability of the interest rate and terms of loans and names the specific media sources by which the advertisements were distributed;

(c) That all published advertisements disseminated primarily in this state by a licensee shall contain the name and an office address of the licensee, which shall be the same as the name and address of the licensee on record with the department;

(d) That an advertisement containing either a quoted interest rate or monthly payment amount must include:

(i) The interest rate of the mortgage, a statement as to whether the rate is fixed or adjustable, and the adjustment index and frequency of adjustments;

(ii) The term in years or months to fully repay the mortgage;

(iii) The APR as computed under federal guidelines; and

(e) That no licensee shall advertise its services in Mississippi in any media disseminated primarily in this state, whether print or electronic, without the words “Mississippi Licensed Mortgage Company” or, if the initial

license is obtained after July 1, 2007, the words “Licensed by the Mississippi Department of Banking and Consumer Finance.”

(f) That the unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or Web sites, and any other documents as established by rule, regulation or order of the commissioner.

SOURCES: Laws, 2000, ch. 579, § 16; reenacted and amended, Laws, 2002, ch. 500, § 17; reenacted and amended, Laws, 2004, ch. 364, § 17; reenacted and amended, Laws, 2007, ch. 581, § 18; Laws, 2009, ch. 544, § 16; reenacted without change, Laws, 2010, ch. 462, § 19; reenacted without change, Laws, 2012, ch. 571, § 18, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment deleted “and” at the end of (d)(ii); and inserted “or “Mississippi Supervised Mortgage Company” at the end of (e).

The 2004 amendment reenacted and amended the section by substituting “Registered” for “Licensed” in (e).

The 2007 amendment reenacted and amended the section by adding “or, if the initial license is obtained after July 1, 2007, the words “Licensed by the Mississippi Department of Banking and Consumer Finance” at the end of (e).

The 2009 amendment deleted “Mississippi Registered Mortgage Company” following “Mississippi Licensed Mortgage Company” in (e); and added (f).

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

§ 81-18-33. Required contents of individual borrower files [Repealed effective July 1, 2016].

The individual borrower files of a licensee shall contain at least the following:

(a) A mortgage origination agreement provided to the borrower containing at least the following statements:

(i) “As required by Mississippi Law, (licensed company name) has secured a bond issued by (name of insurance company), a surety company authorized to do business in this state. A certified copy of this bond is filed with the Mississippi Commissioner of Banking and Consumer Finance.”

(ii) “As a borrower you are protected under the Mississippi S.A.F.E. Mortgage Act.”

(iii) “Complaints against a licensee may be made by contacting the:
Mississippi Department of Banking and
Consumer Finance
P.O. Drawer 23729
Jackson, MS 39225-3729”;

(b) A copy of the original loan application signed and dated by the licensee;

(c) A copy of the signed closing statement as required by HUD or documentation of denial or cancellation of the loan application;

(d) A copy of the good-faith estimate of costs provided to the borrower;

(e) A copy of the appraisal or statement of value if procured as a part of the loan application process;

(f) A copy of a loan lock-in agreement, if any, provided by the licensee;

(g) A copy of the disclosures required under Regulation Z of the federal Truth In Lending Act and other disclosures as required under federal regulations and evidence that those disclosures have been properly and timely made to the borrower; and

(h) A copy of the final signed Uniform Residential Loan Application. However, any mortgage licensee who holds a license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., may substitute an application that is otherwise compliant with federal and state law.

SOURCES: Laws, 2000, ch. 579, § 17; reenacted without change, Laws, 2002, ch. 500, § 18; reenacted and amended, Laws, 2004, ch. 364, § 18; reenacted and amended, Laws, 2007, ch. 581, § 19; Laws, 2009, ch. 544, § 17; reenacted and amended, Laws, 2010, ch. 462, § 20; reenacted without change, Laws, 2012, ch. 571, § 19, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (a)(ii), as amended by Laws, 2002, ch. 500. The words “Mississippi Mortgage Consumer Protection Act” were changed to “Mississippi Mortgage Consumer Protection Law.” The Joint Committee ratified the correction at its May 16, 2002, meeting.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted and amended the section by deleting “the information as contained in the currently effective form of HUD-1-B and including the” preceding “the following statements” in (a).

The 2007 amendment reenacted and amended the section by substituting “licensee” for “mortgage company” everywhere it appears in (a) and (b); rewriting (f), which formerly read: “Evidence of a loan lock-in provided by the lender”; adding (h); and making minor stylistic changes.

The 2009 amendment, in (a), substituted “Mississippi S.A.F.E. Mortgage Licensing Act of 2009” for “Mississippi Mortgage Consumer Protection Law” in (ii), and substituted “P.O. Drawer” for “P.O. Box” in (iii).

The 2010 amendment reenacted and amended the section by substituting “Mississippi S.A.F.E. Mortgage Act” for “Mississippi S.A.F.E. Mortgage Licensing Act of 2009” in (a)(ii); and adding the last sentence in (h).

The 2012 amendment reenacted the section without change.

Federal Aspects — Regulation Z of the Truth in Lending Act is codified at 12 CFR Part 226.

The Truth in Lending Act is codified at 15 USCS §§ 1601 et seq.

§ 81-18-35. Journal of mortgage transactions [Repealed effective July 1, 2016].

Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on its license, which shall include at least the following information:

(a) Name of applicant and co-applicant, if applicable;

(b) Date of application; and

(c) Disposition of loan application, indicating date of loan closing, loan denial, withdrawal and name of lender if applicable.

SOURCES: Laws, 2000, ch. 579, § 18; reenacted without change, Laws, 2002, ch. 500, § 19; reenacted without change, Laws, 2004, ch. 364, § 19; reenacted and amended, Laws, 2007, ch. 581, § 20; reenacted without change, Laws, 2010, ch. 462, § 21; reenacted and amended, Laws, 2012, ch. 571, § 20, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change. The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted and amended the section by adding “and co-applicant, if applicable” in (a).

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted and amended the section by substituting “loan closing” for “loan funding” in (c).

§ 81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated “escrow account”; accounting for funds [Repealed effective July 1, 2016].

(1)(a) All monies paid to a licensee for payment of taxes, loan commitment deposits, work completion deposits, appraisals, credit reports or insurance premiums on property that secures any loan made or serviced by the licensee shall be deposited in an account that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration and shall be kept separate, distinct, and apart from funds belonging to the licensee.

(b) The funds, when deposited, are to be designated as an “escrow account,” or under some other appropriate name, indicating that the funds are not the funds of the licensee.

(2) The licensee shall, upon reasonable notice, account to any debtor whose property secures a loan made by the licensee for any funds which that person has paid to the licensee for the payment of taxes or insurance premiums on the property in question.

(3) The licensee shall, upon reasonable notice, account to the commissioner for all funds in the company’s escrow account.

(4) Escrow accounts are not subject to execution or attachment on any claim against the licensee.

(5) It is unlawful for any licensee knowingly to keep or cause to be kept any funds or money in any bank or other financial institution under the heading of “escrow account” or any other name designating the funds or monies belonging to the debtors of the licensee, except actual funds paid to the licensee for the payment of taxes and insurance premiums on property securing loans made or serviced by the company.

SOURCES: Laws, 2002, ch. 500, § 20; reenacted without change, Laws, 2004, ch. 364, § 20; reenacted and amended, Laws, 2007, ch. 581, § 21; reenacted without change, Laws, 2010, ch. 462, § 22; reenacted without change, Laws, 2012, ch. 571, § 21, eff from and after July 1, 2012.

Amendment Notes — The 2004 amendment reenacted the section without change. The 2007 amendment reenacted and amended the section by substituting “licensee” for “mortgage company” everywhere it appears. The 2010 amendment reenacted the section without change. The 2012 amendment reenacted the section without change.

§ 81-18-37. Suspension or revocation of license; notice to licensee [Repealed effective July 1, 2016].

(1) The department may suspend or revoke any license for any reason that would have been grounds for refusal to issue an original license or for:

(a) A violation of any provision of this chapter or any rule or regulation adopted under this chapter;

(b) Failure of the licensee to pay, within thirty (30) days after it becomes final and nonappealable, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee’s business in this state as a mortgage broker or mortgage lender.

(2) Notice of the department’s intention to enter an order denying an application for a license under this chapter or of an order suspending or revoking a license under this chapter shall be given to the applicant, licensee in writing, sent by registered or certified mail addressed to the principal place of business of the applicant or licensee. Within thirty (30) days of the date of the notice of intention to enter an order of denial, suspension or revocation under this chapter, the applicant, licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within thirty (30) days of the date of the notice of intention, the department shall enter a final order regarding the denial, suspension or revocation. Any final order of the department denying, suspending or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy of the final order shall be forwarded promptly by registered or certified mail addressed to the principal place of business of the applicant or licensee.

SOURCES: Laws, 2000, ch. 579, § 19; reenacted without change, Laws, 2002, ch. 500, § 21; reenacted without change, Laws, 2004, ch. 364, § 21; reenacted and amended, Laws, 2007, ch. 581, § 22; Laws, 2009, ch. 544, § 18; reenacted without change, Laws, 2010, ch. 462, § 23; reenacted without change, Laws, 2012, ch. 571, § 22, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change. The 2004 amendment reenacted the section without change. The 2007 amendment reenacted and amended the section by substituting “mortgage broker or mortgage lender” for “mortgage company” in (1)(b). The 2009 amendment deleted “or registration” following “license,” “or registrant” following “licensee” and “or registrant’s” following “licensee’s” everywhere they appear; and made minor stylistic changes.

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

§ 81-18-39. Definition of “person”; violations of law; cease and desist orders; failure to comply with order; civil penalty [Repealed effective July 1, 2016].

(1) For purposes of this section, the term “person” shall be construed to include any officer, director, employee, affiliate or other person participating in the conduct of the affairs of the person subject to the orders issued under this section.

(2) If the department reasonably determines that a person required to be licensed under this chapter has violated any law of this state or any order or regulation of the department, the department may issue a written order requiring the person to cease and desist from unlawful or unauthorized practices. In the case of an unlawful purchase of mortgage loans, the cease and desist order to a purchaser shall constitute the knowledge required under this section for any subsequent violations.

(3) Any person required to be licensed under this chapter who has been deemed by the commissioner, after notice and hearing, to have violated the terms of any order properly issued by the department under this section shall be liable for a civil penalty not to exceed Three Thousand Dollars (\$3,000.00). The department, in determining the amount of the penalty, shall take into account the appropriateness of the penalty relative to the size of the financial resources of the person, the good-faith efforts of the person to comply with the order, the gravity of the violation, the history of previous violations by the person, and other factors or circumstances that contributed to the violation. The department may compromise, modify or refund any penalty that has been imposed under this section. Any person assessed a penalty as provided in this subsection shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the penalty sought by the department.

SOURCES: Laws, 2000, ch. 579, § 20; reenacted and amended, Laws, 2002, ch. 500, § 22; reenacted without change, Laws, 2004, ch. 364, § 22; reenacted without change, Laws, 2007, ch. 581, § 23; repealed by Laws, 2009, ch. 544, § 24; reenacted without change, Laws, 2010, ch. 462, § 24; reenacted and amended, Laws, 2012, ch. 571, § 23, eff from and after July 1, 2012.

Editor's Note — This section was repealed by Section 24 of Chapter 544, Laws of 2009, effective from and after July 31, 2009. It was reenacted by Section 24 of Chapter 462, Laws of 2010, which has the effect of resurrecting the section.

Amendment Notes — The 2002 amendment deleted former (3); redesignated former (4) as present (3); and in present (3), substituted “commissioner, after notice and hearing,” for “court” in the first sentence, and added the sixth and seventh sentences.

The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted the section without change.

The 2010 amendment reenacted the section without change.

The 2012 amendment, in (2) and (3), deleted “or registered” following “licensed” in the first sentence.

§ 81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2016].

(1) For the purpose of conducting investigations, examinations or other proceedings under this chapter, the commissioner or his designee may issue subpoenas to any individual, person or other entity for the production of all books, papers, records, files, documents or other things, and may subpoena and compel the attendance of witnesses to give testimony, and may administer oaths. Subpoenas as herein provided may be served either by personal process or by registered mail, and upon service shall command attendance of such witnesses, and/or production of such papers and documents, at the time and place so specified.

(2) Any person or entity who fails or refuses to comply with a subpoena issued hereunder may be assessed by the commissioner a civil penalty of not more than Five Hundred Dollars (\$500.00) for each day of noncompliance, and any privileges or licenses issued by the commissioner to the person or entity may be suspended for not more than six (6) months. In addition to the civil penalty, the commissioner shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the commissioner or his designee, shall issue ancillary subpoenas and petitions and may punish as for contempt of court in the event of noncompliance therewith, and assess attorney's fees and costs, if deemed appropriate.

SOURCES: Laws, 2008, ch. 434, § 9; reenacted without change, Laws, 2010, ch. 462, § 25; reenacted without change, Laws, 2012, ch. 571, § 24, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment reenacted the section without change. The 2012 amendment reenacted the section without change.

§ 81-18-41. Continuation of loan servicing under existing servicing contracts by suspended licensee [Repealed effective July 1, 2016].

Nothing in this chapter shall preclude a person whose license has been suspended or revoked from continuing to service mortgage loans pursuant to

servicing contracts in existence at the time of the suspension or revocation for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.

SOURCES: Laws, 2000, ch. 579, § 21, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 23; reenacted without change, Laws, 2004, ch. 364, § 23; reenacted and amended, Laws, 2007, ch. 581, § 24; reenacted without change, Laws, 2010, ch. 462, § 26; reenacted without change, Laws, 2012, ch. 571, § 25, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change. The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted and amended the section by deleting “or registration” following “person whose license” and adding “for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.”

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

§ 81-18-43. Penalties for violations; report of violations; hearing on amount of penalty; judicial review [Repealed effective July 1, 2016].

(1) In order to ensure the effective supervision and enforcement of this chapter, the commissioner may:

(a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter or order or directive entered under this chapter.

(b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of Section 81-18-9(4) or 81-18-15(2), or withholds information or makes a material misstatement in an application for a license or renewal of a license.

(c) Order restitution against persons subject to this chapter for violations of this chapter.

(d) Impose civil penalties on persons subject to this chapter under subsections (2) and (3) of this section.

(e) Issue orders or directives under this chapter as follows:

(i) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist.

(ii) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist.

(iii) Enter immediate temporary orders to cease business under a license issued under the authority granted under Section 81-18-7(6) if the commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter.

(iv) Order or direct such other affirmative action as the commissioner deems necessary.

(2) The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the commissioner under this chapter or order issued under authority of this chapter. The maximum amount of penalty for each act or omission described in this subsection shall be Twenty-five Thousand Dollars (\$25,000.00).

(3) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

(4) For a first offense, the licensee, person required to be licensed, or employee may be found guilty of a misdemeanor and, upon conviction thereof, shall be punishable by imprisonment in the county jail for not more than one (1) year.

(5) For a second or subsequent offense, the licensee, person required to be licensed, or employee shall be guilty of a felony and, upon conviction thereof, may be punished by imprisonment in the custody of the State Department of Corrections for a term not less than one (1) year nor more than five (5) years.

(6) Compliance with the criminal provisions of this section shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(7) The commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in Section 81-18-63.

(8) The state may enforce its rights under the surety bond as required in Section 81-18-11 as an available remedy for the collection of any civil penalties, criminal fines or costs of investigation and/or prosecution incurred.

(9) Any person assessed a penalty as provided in this section shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the penalty sought by the department.

SOURCES: Laws, 2000, ch. 579, § 22; reenacted without change, Laws, 2002, ch. 500, § 24; reenacted and amended, Laws, 2004, ch. 364, § 24; reenacted and amended, Laws, 2007, ch. 581, § 25; Laws, 2009, ch. 544, § 19; reenacted without change, Laws, 2010, ch. 462, § 27; reenacted without change, Laws, 2012, ch. 571, § 26, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted and amended the section by inserting (6), and redesignated former (6) as present (7).

The 2007 amendment reenacted and amended the section by substituting “person required to be registered” for “individual required to be registered” in (1) through (3) and (5).

The 2009 amendment rewrote the section to revise the penalties for violations of this chapter.

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 81-18-45. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2016].

SOURCES: Laws, 2000, ch. 579, § 23; reenacted without change, Laws, 2002, ch. 500, § 25; reenacted without change, Laws, 2004, ch. 364, § 25; reenacted without change, Laws, 2007, ch. 581, § 26; reenacted without change, Laws, 2010, ch. 462 eff from and after July 1, 2010.

Editor’s Note — This section was reenacted without change by Laws of 2002, ch. 500, effective from and after July 1, 2002. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2004, ch. 364, § 25, effective from and after April 20, 2004. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2007, ch. 581, effective from after July 1, 2007. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2010, ch. 462, effective from and after July 1, 2010. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was not reenacted by Laws of 2012, ch. 571. However, the repealer provision in Section 81-18-51 was extended by Laws of 2012, ch. 571, § 27, effective July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted the section without change.

The 2010 amendment reenacted the section without change.

§ 81-18-47. Immunity from liability [Repealed effective July 1, 2016].

SOURCES: Laws, 2000, ch. 579, § 24; reenacted without change, Laws, 2002, ch. 500, § 26; reenacted without change, Laws, 2004, ch. 364, § 26; reenacted without change, Laws, 2007, ch. 581, § 27; reenacted without change, Laws, 2010, ch. 462, eff from and after July 1, 2010.

Editor’s Note — This section was reenacted without change by Laws of 2002, ch. 500, effective from and after July 1, 2002. Since the language of the section as it appears

in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2004, ch. 364, § 26, effective from and after April 20, 2004. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2007, ch. 581, effective from and after July 1, 2007. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2010, ch. 462, effective from after July 1, 2010. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was not reenacted by Laws of 2012, ch. 571. However, the repealer provision in Section 81-18-51 was extended by Laws of 2012, ch. 571, § 27, effective July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted the section without change.

The 2010 amendment reenacted the section without change.

§ 81-18-49. Grandfather provisions [Repealed effective July 1, 2016].

SOURCES: Laws, 2000, ch. 579, § 25; reenacted without change, Laws, 2002, ch. 500, § 27; reenacted without change, Laws, 2004, ch. 364, § 27; reenacted without change, Laws, 2007, ch. 581, § 28; reenacted without change, Laws, 2010, ch. 462; eff from and after July 1, 2010.

Editor's Note — This section was reenacted without change by Laws of 2002, ch. 500, effective from and after July 1, 2002. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2004, ch. 364, § 27, effective from and after April 20, 2004. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2007, ch. 581, effective from and after July 1, 2007. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2010, ch. 462, effective from and after July 1, 2010. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was not reenacted by Laws of 2012, ch. 571. However, the repealer provision in Section 81-18-51 was extended by Laws of 2012, ch. 571, § 27, effective July 1, 2012.

Amendment Notes — The 2002 amendment reenacted the section without change.

The 2004 amendment reenacted the section without change.

The 2007 amendment reenacted the section without change.

The 2010 amendment reenacted the section without change.

§ 81-18-51. Repeal of §§ 81-18-1 through 81-18-63 [Repealed effective July 1, 2016].

Sections 81-18-1 through 81-18-63 shall stand repealed on July 1, 2016.

SOURCES: Laws, 2000, ch. 579, § 27; Laws, 2002, ch. 500, § 28; Laws, 2004, ch. 364, § 28; Laws, 2007, ch. 581, § 29; Laws, 2009, ch. 544, § 20; reenacted and amended, Laws, 2010, ch. 462, § 31; Laws, 2012, ch. 571, § 27, eff from and after July 1, 2012.

Amendment Notes — The 2002 amendment substituted “on July 1, 2005” for “from and after July 1, 2002.”

The 2004 amendment extended the date of the repealer for §§ 81-18-1 through 81-18-49 from “July 1, 2005” to “July 1, 2007.”

The 2007 amendment extended the date of the repealer for §§ 81-18-1 through 81-18-49 from July 1, 2007 until July 1, 2012.

The 2009 amendment substituted “81-18-63” for “81-18-49”; and amended the date of the repealer for §§ 81-18-1 through 81-18-63 by substituting “July 1, 2010” for “July 1, 2012.”

The 2010 amendment reenacted and amended the section, extending the date of the repealer for §§ 81-18-1 through 81-18-63 by substituting “July 1, 2013” for “July 1, 2010.”

The 2012 amendment substituted “July 1, 2016” for “July 1, 2013.”

§ 81-18-53. Applicability of chapter [Repealed effective July 1, 2016].

The provisions of this chapter shall apply to the activities of retail sellers of manufactured homes to the extent as determined by the United States Department of Housing and Urban Development through guidelines, rules, regulations or interpretive letters or the United States Consumer Financial Protection Bureau.

SOURCES: Laws, 2009, ch. 544, § 23; reenacted without change, Laws, 2010, ch. 462, § 28; Laws, 2011, ch. 386, § 1; reenacted and amended, Laws, 2012, ch. 571, § 28, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment inserted the subsection (1) designation; and added (2).

The 2012 amendment added “or the United States Consumer Financial Protection Bureau” to the end; and deleted the (1) designation and (2), which read: “In addition to the exemptions in Section 81-18-5(b) and (c), the provisions of this chapter shall apply to the activities of owner financing only to the extent as determined by the United States Department of Housing and Urban Development through its guidelines, rules, regulations or interpretive letters.”

Federal Aspects — Housing and Economic Recovery Act of 2008, Public Law 110-289.

§ 81-18-55. Activities prohibited in the course of residential mortgage loan transactions; compliance with borrower’s request for information; compliance with certain requirements whether residential mortgage loan is in default or borrower is in bankruptcy [Repealed effective July 1, 2016].

(1) In addition to the activities prohibited under other provisions of this chapter, it shall be unlawful in the course of any residential mortgage loan transaction:

(a) For any person to fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA) and regulations adopted thereunder;

(b) For a mortgage lender to fail to provide written notice to a borrower upon taking action to place hazard, homeowners, or flood insurance on the mortgaged property or to place such insurance when the mortgage lender knows or has reason to know that the insurance is in effect;

(c) For a mortgage lender to place hazard, homeowners or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last-known coverage amount of insurance;

(d) For a mortgage lender to fail to provide to the borrower a refund or earned premiums paid by a borrower or charged to the borrower for hazard, homeowners, or flood insurance placed by a mortgage lender if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within twelve (12) months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the mortgage lender shall refund the entire premium;

(e) For a mortgage lender to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by the borrower, to pay all past-due amounts, outstanding or overdue charges, and restore the loan to a nondelinquent status, but his reinstatement shall be available to a borrower no more than twice in any twenty-four-month period;

(f) For a mortgage lender to fail to mail, at least forty-five (45) days before foreclosure is initiated, a notice addressed to the borrower at the borrower's last-known address with the following information:

(i) An itemization of all past-due amounts causing the loan to be in default;

(ii) An itemization of any other charges that must be paid in order to bring the loan current;

(iii) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss the options with the mortgage lender, or a counselor approved by the U.S. Department of Housing and Urban Development (HUD);

(iv) The address, telephone number, and other contact information for the mortgage lender or the agent for the mortgage lender who is authorized to attempt to work with the borrower to avoid foreclosure;

(v) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in Mississippi to avoid foreclosure; and

(vi) The address, telephone number, and other contact information for the consumer complaint section of the Mississippi Department of Banking and Consumer Finance;

(g) For a mortgage lender to fail to make all payments from any escrow account held for the borrower for insurance, taxes and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result regardless of whether the loan is delinquent, unless there are not sufficient funds in the account to cover the payments and the mortgage lender has a reasonable basis to believe that recovery of the funds will not be possible.

(2) The mortgage lender shall make reasonable attempts to comply with a borrower's request for information about the home loan account and to respond to any dispute initiated by the borrower about the loan account, as provided in this section. The mortgage lender shall maintain, until the home loan is paid in full, otherwise satisfied, or sold, written or electronic records of each written request for information regarding a dispute or error involving the borrower's account. Specifically, the mortgage lender is required to do all of the following:

(a) Provide a written statement to the borrower within ten (10) business days of receipt of a written request from the borrower that includes or otherwise enables the mortgage lender to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the mortgage lender regarding information sought by the borrower. The borrower is entitled to one such statement in any six-month period free of charge, and additional statements shall be provided if the borrower pays the mortgage lender a reasonable charge for preparing and furnishing the statement not to exceed Twenty-five Dollars (\$25.00). The statement shall include the following information if requested:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the loan, including the principal due, the amount of funds (if any) held in a suspense account, the amount of the escrow balance (if any) known to the mortgage lender, and whether there are any escrow deficiencies or shortages known to the mortgage lender;

(iii) The identity, address and other relevant information about the current holder, owner or assignee of the loan; and

(iv) The telephone number and mailing address of a mortgage lender representative with the information and authority to answer questions and resolve disputes;

(b) Provide the following information and/or documents within twenty-five (25) business days of receipt of a written request from the borrower that includes or otherwise enables the mortgage lender to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the mortgage lender regarding information sought by the borrower:

(i) A copy of the original note, or if unavailable, an affidavit of the lost note;

(ii) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history

identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the home loan including escrow account activity and suspense account activity, if any. The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the mortgage lender has not serviced the home loan for the entire two-year time period the mortgage lender shall provide the information going back to the date on which the mortgage lender began servicing the home loan. For purposes of this subsection, the date of the request for the information shall be presumed to be no later than thirty (30) days from the date of the receipt of the request. If the mortgage lender claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the mortgage lender has serviced the loan, the mortgage lender shall provide an account history beginning with the month that the mortgage lender claims any outstanding sums are owed on the loan up to the date of the request for the information. The borrower is entitled to one (1) such statement in any six-month period free of charge. Additional statements shall be provided if the borrower pays the mortgage lender a reasonable charge for preparing and furnishing the statement not to exceed Fifty Dollars (\$50.00); and

(c) Promptly correct errors relating to the allocation of payments, the statement of account, or the payoff balance identified in any notice from the borrower provided in accordance with paragraph (b) of this subsection, or discovered through the due diligence of the mortgage lender or other means.

(3) A mortgage lender must comply as to every residential mortgage loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

(a) Any fee that is incurred by a mortgage lender shall be both:

(i) Assessed within forty-five (45) days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within forty-five (45) days of the date they are charged by either the attorney or trustee to the mortgage lender; and

(ii) Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last-known address within thirty (30) days after assessing the fee, provided the mortgage lender shall not be required to take any action in violation of the provisions of the federal bankruptcy code. The mortgage lender shall not be required to send such a statement for a fee that: results from a service that is affirmatively requested by the borrower, is paid for by the borrower at the time the service is provided, and is not charged to the borrower's loan account.

(b) All amounts received by a mortgage lender on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one (1) business day of

the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a mortgage lender uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within ten (10) business days by mail at the borrower's last-known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(c) The notification required by paragraph (b) of this subsection is not necessary if the mortgage lender complies with the terms of any agreement or plan made with the borrower and has applied and credited payments received in the manner required, and the mortgage lender is applying and crediting payments to the borrower's account in compliance with all applicable state and federal laws, including bankruptcy laws, and if at least one (1) of the following occurs:

(i) The borrower has entered into written loss mitigation, loan modification, or forbearance agreement with the mortgage lender that itemizes all amounts due and specifies how payments will be applied and credited;

(ii) The borrower has elected to participate in an alternative payment plan, such as a biweekly payment plan, that specifies as part of a written agreement how payments will be applied and credited; or

(iii) The borrower is making payments pursuant to a bankruptcy plan.

(d) Failure to charge the fee or provide the information within the allowable time and in the manner required under subsection (3)(a)(i) of this section constitutes a waiver of such fee.

(e) All fees charged by a mortgage lender must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law.

(f) A mortgage lender shall charge a sum or prepayment penalty for the prepayment of any residential mortgage loan only as authorized by Section 75-17-31.

(g) A mortgage lender shall charge a late payment charge only as authorized by Section 75-17-27.

(h) The costs of collection and reasonable attorney fees may not be in excess of twenty-five percent (25%) of the unpaid debt after default, when the debt has been referred to an attorney for collection.

(i) Charges or premiums for credit life insurance actually written on the life of the borrower or endorser in an amount not to exceed the total sum payable under the residential mortgage loan, including all interest, fees, costs and charges.

SOURCES: Laws, 2012, ch. 571, § 31, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 81-18-51.

Federal Aspects — Real Estate Settlement Procedures Act generally, see 12 U.S.C.S. § 2601 et seq.

NATIONWIDE LICENSING SYSTEM

Sec.

- 81-18-61. Mortgage loan originators required to be licensed and registered through Nationwide Mortgage Licensing System and Registry; background checks; fees; process to challenge information in system; independent contractor loan processor or underwriter to be licensed as mortgage loan originator [Repealed effective July 1, 2016].
- 81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2016].

§ 81-18-61. Mortgage loan originators required to be licensed and registered through Nationwide Mortgage Licensing System and Registry; background checks; fees; process to challenge information in system; independent contractor loan processor or underwriter to be licensed as mortgage loan originator [Repealed effective July 1, 2016].

(1) In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish, by rule, regulation or order, requirements as necessary, including, but not limited to:

- (a) Background checks for:
 - (i) Criminal history through fingerprint or other databases;
 - (ii) Civil or administrative records;
 - (iii) Credit history; or
 - (iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;
- (b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;
- (c) The setting or resetting as necessary of renewal or reporting dates; and
- (d) Requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) The commissioner shall establish a process by which mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

(3) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(4) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 81-18-7(4). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

SOURCES: Laws, 2007, ch. 581, § 30; Laws, 2008, ch. 434, § 8; Laws, 2009, ch. 544, § 21; reenacted without change, Laws, 2010, ch. 462, § 29; reenacted without change, Laws, 2012, ch. 571, § 29, eff from and after July 1, 2012.

Amendment Notes — The 2008 amendment substituted present (5) for former (5), which read: “The commissioner may require a participating licensee/registrant to submit a processing fee, administrative fee or similar fee to the multistate licensing system; however, any such fee shall be considered a licensing fee as provided in Sections 81-18-5(l) and 81-18-15.”

The 2009 amendment rewrote the section to provide that the commissioner require loan originators to be licensed and registered through the nationwide mortgage licensing system and registry.

The 2010 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

§ 81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2016].

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or applicable state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or applicable state law.

(2) In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association

of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the commissioner.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) Any applicable state law relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

SOURCES: Laws, 2009, ch. 544, § 22; reenacted without change, Laws, 2010, ch. 462, § 30; reenacted without change, Laws, 2012, ch. 571, § 30, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment reenacted the section without change. The 2012 amendment reenacted the section without change.

Federal Aspects — Housing and Economic Recovery Act of 2008, Public Law 110-289.

CHAPTER 19

Consumer Loan Broker Act

SEC.

81-19-7. Exclusions from chapter coverage.

81-19-23. Activities prohibited; violation; penalties; borrower's remedies.

81-19-29. Suspension or revocation of license; grounds; commissioner may to enter orders to require persons to refrain from violations.

§ 81-19-1. Short title.

JUDICIAL DECISIONS

1. Preemption by National Bank Act.

Plaintiff consumers' state claims under the Mississippi Consumer Loan Broker Act, Miss. Code Ann. § 81-19-1 et seq., and Mississippi Mortgage Consumer Protection Act, Miss. Code Ann. § 81-18-1 et seq., relating to defendant national bank's

real estate lending powers granted by the National Bank Act, were preempted by that Act and by 12 C.F.R. § 34.3(a), (b). *Austin v. Provident Bank*, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 37113 (N.D. Miss. July 26, 2005).

§ 81-19-7. Exclusions from chapter coverage.

Except as otherwise provided in this section, this chapter does not apply to:

(a) Banks, bank holding companies, credit unions, insurance companies, savings and loan associations, savings banks, savings and loan association holding companies, small loan licensees, pawnbrokers, trust companies and their employees when acting on behalf of the employer.

(b) Approved mortgagees of the United States Department of Housing and Urban Development, the Federal Housing Administration or other federal agency.

(c) Mortgage companies required to be licensed and individuals required to be registered under the Mississippi Mortgage Consumer Protection Act (Sections 81-18-1 through 81-18-47), and persons exempt from licensing and registration as provided in Section 81-18-5.

(d) An attorney or certified public accountant licensed in this state, or an enrolled agent who has a current certification from the Internal Revenue Service, who is not actively and principally engaged in the business of being a consumer loan broker even though the services of a consumer loan broker are occasionally rendered in the attorney's practice of law, the certified public accountant's practice of accounting or the enrolled agent's practice of tax services or bookkeeping. However, any such attorney, certified public accountant or enrolled agent still shall be subject to the provisions of this chapter except for the provisions of Section 81-19-5.

(e) A person who, without the consent of the owner, receives a mortgage or deed of trust on real or personal property as security for an obligation arising from use of materials or services in the improvement or repair of the property.

(f) A seller of real property who receives one or more mortgages or deeds of trust as security for a purchase money obligation.

SOURCES: Laws, 1992, ch. 485, § 4; Laws, 1994, ch. 320 § 6; Laws, 1997, ch. 332, § 5; Laws, 2000, ch. 579, § 26; Laws, 2004, ch. 370, § 1; Laws, 2005, ch. 327, § 1, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a typographical error in (c). "Sections 81-18-1 through 81-18-47" was substituted for "Sections 1 through 24 of this act" following "Mississippi Mortgage Consumer Protection Act."

Amendment Notes — The 2004 amendment, in (d), inserted "or certified public accountant" following "An attorney" and added "or the certified public accountant's practice of accounting" following "attorney's practice of law" in the first sentence, and added the second sentence.

The 2005 amendment rewrote (d) to exempt enrolled agents with the Internal Revenue Service from the provisions of this chapter, and to provide that enrolled agents exempted from this chapter still are subject to the provisions of this chapter except for the requirements of obtaining a license and posting a bond.

§ 81-19-23. Activities prohibited; violation; penalties; borrower's remedies.

(1) No consumer loan broker may:

(a) Charge or collect any service charge or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall a service charge exceed three percent (3%) of the original principal amount of the loan or a fee of Twenty-five Dollars (\$25.00), whichever is greater;

(b) Advertise:

(i) Using false, misleading or deceptive statements regarding the services provided by the consumer loan broker, the amount of service charge or the rates, terms and conditions of any loan which might be obtained through the services of the consumer loan broker;

(ii) Using the terms "insured," "bonded," "guaranteed" or "secured" with regard to the consumer loan broker's services or to any loan which might be obtained through the services of the consumer loan broker; or

(iii) Without including the full name and address of the consumer loan broker;

(c) Act as a lender on any consumer loan transaction from which the consumer loan broker receives a service charge from the borrower;

(d) Receive a service charge from a borrower on any consumer loan made by an affiliated lender, meaning a lender under common control or ownership with the consumer loan broker;

(e) Receive a service charge on any consumer loan from which the consumer loan broker also receives compensation as a licensed real estate broker or real estate salesman, unless the fact of payment, the amount of the service charge and the identity of the consumer loan broker is fully disclosed to the borrower;

(f) Accept an assignment of wages or salary from any borrower for any purpose;

(g) Make a false promise in order to influence or induce a person to use the consumer loan broker's services, whether made through agents, employees, advertising or otherwise;

(h) Misrepresent or conceal essential or material facts regarding the consumer loan broker's services on any transaction under this chapter;

(i) Withhold or suppress information from the commissioner or refuse to permit an examination of the consumer loan broker's records by the commissioner or his agent;

(j) Fail to disburse funds in compliance with written agreements or to account for all monies received and disbursed; or

(k) Fail to comply with the provisions of this chapter or of the regulations of the commissioner.

(2) Any person who knowingly violates any provision of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by commitment to the custody of the State Department of Corrections for a term of not more than three (3) years, or by both such fine and commitment.

(3)(a) Any borrower injured by a violation of this section may bring an action for recovery of damages. Judgment shall be entered for actual damages but in no case shall be less than the amount paid by the borrower to the loan broker, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(b) Any borrower injured by a violation of this section may bring an action against the surety bond or trust account, if any, of the loan broker.

(c) The remedies provided under this section are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

SOURCES: Laws, 1992, ch. 485, § 12; Laws, 1999, ch. 505, § 1; Laws, 2004, ch. 370, § 2, eff from and after passage (approved Apr. 20, 2004.)

Amendment Notes — The 2004 amendment added “or a fee of Twenty-five Dollars (\$25.00), whichever is greater” at the end of (1)(a).

JUDICIAL DECISIONS

3. Specific evidence required.

Grant of summary judgment in favor of a lending company, an agent, and others (appellees) in the husband's and wife's action alleging that there were violations of Miss. Code Ann. § 81-19-23 was proper

because, besides their allegations, the husband and wife did not put forth any specific evidence of any wrongdoing by appellees sufficient to withstand summary judgment. *Dominquez v. Palmer*, 970 So. 2d 737 (Miss. Ct. App. 2007).

§ 81-19-29. Suspension or revocation of license; grounds; commissioner may enter orders to require persons to refrain from violations.

(1) After notice and hearing, the commissioner may suspend or revoke any license if he finds that the licensee has knowingly and without exercising due care:

(a) Failed to pay the annual license fee imposed by this chapter or an examination fee imposed by the commissioner under authority of this chapter; or

(b) Violated any provision of this chapter or of any rule or regulation issued under this chapter.

(2) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order to require the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Laws, 1992, ch. 485, § 15; Laws, 2004, ch. 370, § 3, eff from and after passage (approved Apr. 20, 2004.)

Amendment Notes — The 2004 amendment added (2).

CHAPTER 21

Insurance Premium Finance Companies

SEC.

81-21-1.	Definitions.
81-21-3.	License requirement; fees; deposit of fee revenues in Consumer Finance Fund; license application form; promulgation of rules and regulations.
81-21-9.	Penalty in lieu of revocation or suspension of license.
81-21-13.	Premium finance agreement; contents.
81-21-15.	Permissible charges; computation of interest; prepayment by insured.
81-21-21.	Return of unearned premiums to premium finance company; refund of excess to insured.

§ 81-21-1. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(b) "Person" means an individual, partnership, association, business corporation, nonprofit corporation, common-law trust, joint-stock company or any other entity, however organized.

(c) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced to an insurer or to an insurance agent or broker in payment of premiums of an insurance contract together with interest or discount and a service charge, as authorized and limited by Sections 81-21-13 through 81-21-23.

(d) "Premium finance company" means a person engaged in the business of entering into premium finance agreements or acquiring premium finance agreements from other premium finance companies.

(e) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic,

microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1992, ch. 569, § 1; Laws, 2000, ch. 621, § 35; Laws, 2010, ch. 317, § 2, eff from and after Oct. 1, 2010.

Amendment Notes — The 2010 amendment substituted “an agreement by which an insured” for “an agreement by which an insurance” in (1)(c).

§ 81-21-3. License requirement; fees; deposit of fee revenues in Consumer Finance Fund; license application form; promulgation of rules and regulations.

(1) No person shall engage in the business of a premium finance company in this state without first having obtained a license as a premium finance company from the commissioner.

(2) With each initial application for a license, the applicant shall pay to the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars (\$750.00), and for renewal applications, an annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00) payable as of the first day of July of each year to the commissioner for deposit into the special fund in the State Treasury designated as the “Consumer Finance Fund.” The commissioner may employ persons as necessary to administer this chapter and to examine or investigate and make reports on violations of this chapter.

(3) The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee’s records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner. Those fees shall be payable in addition to other fees and taxes now required by law and shall be expendable receipts for the use of the commissioner in defraying the cost of the administration of this chapter.

All fees, license tax and penalties provided for in this chapter that are payable to the commissioner shall, when collected by him or his designated representative, be deposited in the special fund in the State Treasury known as the “Consumer Finance Fund” and shall be expended by the commissioner solely and exclusively for the purpose of administering and enforcing the provisions of this chapter.

(4) Application for licensing shall be made on forms prepared by the commissioner and shall contain the following information:

(a) Name, business address and telephone number of the premium finance company;

(b) Name and business address of corporate officers and directors or principals or partners; and

(c) A sworn statement by an appropriate officer, principal or partner of the premium finance company that:

(i) The premium finance company is financially capable to engage in the business of insurance premium financing;

(ii) If a corporation, that the corporation is authorized to transact business in this state; and

(iii) If any material change occurs in the information contained in the registration form, a revised statement shall be submitted to the commissioner.

(5) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with the provisions of the Mississippi Administrative Procedures Law.

SOURCES: Laws, 1992, ch. 569, § 2; Laws, 2000, ch. 621, § 36; Laws, 2004, ch. 450, § 5, eff from and after passage (approved Apr. 28, 2004.)

Amendment Notes — The 2004 amendment substituted “Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars (\$600.00) for” for “Two Hundred Dollars (\$200.00) nor more than Three Hundred Dollars (\$300.00) per examination of” in the first sentence; substituted “Those” for “Such” at the beginning of the third sentence in (3); substituted “that” for “which” in the undesignated paragraph.

§ 81-21-9. Penalty in lieu of revocation or suspension of license.

(1) In lieu of revoking or suspending the license for any of the causes enumerated in this chapter, after a hearing as provided in Section 81-21-7, the commissioner may subject the company to a penalty not to exceed Five Hundred Dollars (\$500.00) for each offense when the commissioner finds that the public interest would not be harmed by the continued operation of the company. The amount of any such penalty shall be paid by the company to the commissioner for deposit into the special fund in the State Treasury designated as the “Consumer Finance Fund.” At any hearing provided by this chapter, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person’s current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The

commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Laws, 1992, ch. 569, § 5; Laws, 2000, ch. 621, § 37; Laws, 2004, ch. 450, § 6, eff from and after passage (approved Apr. 28, 2004.)

Amendment Notes — The 2004 amendment substituted “the” for “such” twice in (1); added (3).

§ 81-21-13. Premium finance agreement; contents.

A premium finance agreement shall:

(a) Be dated and signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight-point type;

(b) Contain the name and place of business of the insurance agent or broker negotiating the related insurance contract, the name and residence or place of business of the insured, the name and place of business of the premium finance company, a brief description of the insurance contracts involved and the amount of the premium; and

(c) Set forth the following items, where applicable:

(i) The total amount of the premium, less an itemized listing of any nonrefundable charges;

(ii) The amount of the down payment;

(iii) The principal balance, which is the difference between the amounts stated under subparagraphs (i) and (ii) of this paragraph;

(iv) The amount of the interest and the annual percentage rate;

(v) The balance payable by the insured, meaning the sum of amounts stated under subparagraphs (iii) and (iv) of this paragraph; and

(vi) The number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

SOURCES: Laws, 1992, ch. 569, § 7; Laws, 2004, ch. 450, § 7, eff from and after passage (approved Apr. 28, 2004.)

Amendment Notes — The 2004 amendment added “less an itemized listing of any nonrefundable charges” to the end of (b)(c)(i).

§ 81-21-15. Permissible charges; computation of interest; prepayment by insured.

(1) A premium finance company shall not charge, contract for, receive or collect any interest or service charge other than as permitted in this section.

(2) The interest is to be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance contract or as otherwise agreed to by the parties, for which the premiums are

being advanced, to the date when the final installment of the premium finance agreement is payable.

(3) Notwithstanding any provision of law to the contrary, for any loan or extension of credit in an amount of Ten Thousand Dollars (\$10,000.00) or less, made by a licensee under this chapter, the licensee may contract for and receive any finance charge agreed to in writing by the licensee and the insured, not to exceed twenty-four percent (24%) per annum on the unpaid balance; however, if the loan or extension of credit is in an amount more than Ten Thousand Dollars (\$10,000.00), the licensee may contract for and receive any finance charge agreed to in writing by the licensee and the insured.

(4) Notwithstanding the provisions of any premium finance agreement, any insured shall receive a refund of the unearned finance charge, based on the Rule of 78's, upon the voluntary prepayment of the obligation in full or upon the cancellation of such contract. Where the amount of the refund credit is less than Three Dollars (\$3.00), no refund need be made.

SOURCES: Laws, 1992, ch. 569, § 8; Laws, 2004, ch. 450, § 8, eff from and after passage (approved Apr. 28, 2004.)

Amendment Notes — The 2004 amendment deleted “provided” following “unpaid balance” in (3); substituted “shall receive a refund of the unearned finance charge, based on the Rule of 78's, upon the voluntary prepayment of the obligation in full or upon the cancellation of such contract” for “may voluntarily prepay the obligation in full at any time and shall receive a refund credit, which shall represent at least as great a proportion of the interest or discount as the sum of the periodic balances, after the month in which prepayment is made, bears to the sum of all periodic balances under the schedule of installments in the agreement” in (4).

§ 81-21-21. Return of unearned premiums to premium finance company; refund of excess to insured.

(1) Whenever a financed insurance contract is cancelled, the insurer shall return to the premium finance company as soon as reasonably possible whatever gross unearned premiums are due under the insurance contract, and also shall furnish to the premium finance company a report setting forth an itemization of the unearned premiums under the policy that includes a detailed mathematical summary of the computation of the return premium.

(2) If a premium is subject to an audit to determine the final premium amount, the gross unearned premium shall be calculated upon the deposit premium and the insurer shall return whatever gross unearned premiums are due based upon that deposit to the finance company for the account of the insured.

(3) If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, provided that no such refund shall be required if it amounts to less than Three Dollars (\$3.00).

SOURCES: Laws, 1992, ch. 569, § 11; Laws, 1997, ch. 332, § 6; Laws, 1999, ch. 336, § 1; Laws, 2006, ch. 354, § 1; Laws, 2010, ch. 317, § 1, eff from and after Oct. 1, 2010.

Amendment Notes — The 2006 amendment, in (1), inserted “to the premium finance company as soon as reasonably possible” following “the insurer shall return,” and deleted “calculated pro rata unless otherwise required by law directly to the premium finance company for the account of the insured or insureds as soon as reasonably possible but in no event later than thirty (30) days after the effective date of cancellation” at the end.

The 2010 amendment, in (1), added “and also shall furnish ... summary of the computation of the return premium” at the end; and made minor stylistic changes in (2) and (3).

CHAPTER 22

Mississippi Debt Management Services Act [Repealed effective July 1, 2013]

SEC.

- 81-22-1. Short title [Repealed effective July 1, 2013].
- 81-22-3. Definitions [Repealed effective July 1, 2013].
- 81-22-5. Licensure and annual relicensure [Repealed effective July 1, 2013].
- 81-22-7. Bond required [Repealed effective July 1, 2013].
- 81-22-9. Handling of consumer funds [Repealed effective July 1, 2013].
- 81-22-11. Requirement for written agreement [Repealed effective July 1, 2013].
- 81-22-13. Fees charged to the consumer [Repealed effective July 1, 2013].
- 81-22-15. Reports and records [Repealed effective July 1, 2013].
- 81-22-17. Powers and functions of commissioner [Repealed effective July 1, 2013].
- 81-22-19. Prohibited acts [Repealed effective July 1, 2013].
- 81-22-21. Advertising [Repealed effective July 1, 2013].
- 81-22-23. Effects of violations on rights of parties [Repealed effective July 1, 2013].
- 81-22-25. Suspension or revocation of registration [Repealed effective July 1, 2013].
- 81-22-27. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2013].
- 81-22-28. Written notice of intent by licensee to use third-party payment processor; content of notice; surety bond required; examination of third-party payment processor records by department; termination of agreement or contract with third-party payment processor. [Repealed effective July 1, 2013].
- 81-22-29. Repealed
- 81-22-31. Repeal of Sections 81-22-1 through 81-22-28.

§ 81-22-1. Short title [Repealed effective July 1, 2013].

This chapter may be known and cited as the “Mississippi Debt Management Services Act.”

SOURCES: Laws, 2003, ch. 465, § 1; reenacted and amended, Laws, 2006, ch. 398, § 1; reenacted without change, Laws, 2010, ch. 396, § 1, eff from and after July 1, 2010.

Editor’s Note — Laws of 2003, ch. 465, § 16, provides:

“SECTION 16. Sections 1 through 15 of this chapter shall stand repealed on July 1, 2006.”

Laws of 2006, ch. 398, § 17 repealed Laws of 2003, ch. 465, § 16, effective from and after July 1, 2006.

For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by substituting “Mississippi Debt Management Services Act” for “Mississippi Nonprofit Debt Management Services Act.”

The 2010 amendment reenacted this section without change.

§ 81-22-3. Definitions [Repealed effective July 1, 2013].

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

(a) “Commissioner” means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(b) “Debt management service” means:

(i) The receiving of money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation;

(ii) Arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation;

(iii) Exercising control, directly or indirectly, or arranging for the exercise of control over funds of the consumer for the purpose of distributing payments to or among one or more creditors of the consumer;

(iv) Acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, compromising, negotiating, settling, discharging or otherwise deferring, reducing or altering the terms of payment of the consumer’s obligation; or

(v) Improving or offering to improve a consumer’s credit record, history or rating.

(c) “Debt management service provider” means a person that provides or offers to provide to a consumer in this state any debt management services, in return for a fee or other consideration. “Debt management service provider” does not include:

(i) Those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(ii) Those situations involving credit report error correction services and situations covered under paragraph (b)(v) of this section when performed in the lawful practice of law in this state;

(iii) Title insurers who adjust debts out of escrow funds only incidentally in the regular course of their principal business;

(iv) Judicial officers or others acting under court orders;

(v) Those situations involving debt adjusting incurred incidentally in connection with the lawful practice as a certified public accountant;

(vi) Bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(vii) Employers who adjust debts for their employees;

(viii) Any person who, at the request of a debtor, makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts solely in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts;

(ix) Any institution that is regulated, supervised or licensed by the department or any out-of-state institution that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration; or

(x) Licensed attorneys engaged in the lawful practice of law.

(d) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(e) "Fair share contribution" means voluntary contributions paid to the licensee by the creditor for collecting funds from clients pursuant to debt management services.

(f) "Licensee" means a person or entity who is required to be licensed as a debt management service provider.

(g) "Person" means an individual or an organization.

(h) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(i) "Third-party payment processor" means any entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain or distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

SOURCES: Laws, 2003, ch. 465, § 2; reenacted and amended, Laws, 2006, ch. 398, § 2; Laws, 2008, ch. 332, § 1; reenacted without change, Laws, 2010, ch. 396, § 2, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by substituting "compromising, negotiating, settling, discharging or otherwise deferring, reducing or" for "compromising, settling, discharging or otherwise" in (b)(iv); adding (b)(v); adding present (e) and (f); redesignating former (e) and (f) as present (g) and (h); and adding (i).

The 2008 amendment, in (c), added (ii), redesignated former (ii) through (viii) as present (iii) through (ix), added (x), and made minor related stylistic changes.

The 2010 amendment reenacted this section without change.

§ 81-22-5. Licensure and annual relicensure [Repealed effective July 1, 2013].

(1) **Licensure and relicensure.** — No person or entity may act as a debt management service provider with respect to consumers who are residents of this state without a license issued under this chapter. The license application must be in a form prescribed by the commissioner. The commissioner may refuse the application if it contains erroneous or incomplete information. A license may not be issued unless the commissioner, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter. Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars (\$750.00), and on or before December 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee remains unpaid after December 31, the license shall expire. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before beginning business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department.

(2) **Action on registration application.** — The commissioner shall take action on an application within thirty (30) days after the commissioner has accepted the application as complete. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for license if the commissioner has notified the applicant in writing that the application has been denied or the commissioner has not issued a license within thirty (30) days after the application for the license was accepted as complete by the commissioner. A request for a hearing may not be made more than sixty (60) days after the application was accepted as complete or the commissioner has mailed a written notice to the applicant stating that the application has been denied and stating the reasons for the denial of the application.

SOURCES: Laws, 2003, ch. 465, § 3; reenacted and amended, Laws, 2006, ch. 398, § 3; reenacted without change, Laws, 2010, ch. 396, § 3, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by deleting (1), which pertained to nonprofit organizations; redesignating former (2) and (3) as present (1) and (2); and in present (1), adding the first sentence of former (1) as

the first sentence, and inserting “license” preceding “application” in the second sentence.

The 2010 amendment reenacted this section without change.

§ 81-22-7. Bond required [Repealed effective July 1, 2013].

To be eligible for a license, an applicant shall file with the commissioner a bond with good security in the penal sum of Fifty Thousand Dollars (\$50,000.00), payable to the State of Mississippi for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment that may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation of the provisions of this chapter. The applicant may file, in lieu of the bond, cash, a certificate of deposit or government bonds in the amount of Fifty Thousand Dollars (\$50,000.00). Those deposits shall be filed with the commissioner and are subject to the same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those deposits are payable to the depositor.

SOURCES: Laws, 2003, ch. 465, § 4; reenacted and amended, Laws, 2006, ch. 398, § 4; reenacted without change, Laws, 2010, ch. 396, § 4, eff from and after July 1, 2010.

Editor’s Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by making a minor stylistic change in the next-to-last sentence.

The 2010 amendment reenacted this section without change.

§ 81-22-9. Handling of consumer funds [Repealed effective July 1, 2013].

(1) **Funds deposited in escrow account.** — The debt management service provider shall deposit, within two (2) business days of receipt, all funds received from or on behalf of a consumer for payment to a creditor or creditors in a federally insured escrow account for the benefit of the consumer in a supervised financial organization. Any escrow account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.

(2) **Requirements for handling of funds.** — The debt management service provider shall:

(a) Maintain separate records of account for each consumer receiving debt management services;

(b) Remit funds received from or on behalf of a consumer to the consumer’s creditor or creditors within fifteen (15) business days of receipt of the funds; and

(c) Correct or remedy any misdirected payments resulting from an error by the debt management service provider and reimburse the consumer for any actual costs or fees imposed by a creditor as a result of such misdirection.

(3) **Commingling of funds.** — The debt management service provider may not commingle escrow accounts established for the benefit of consumers with any operating accounts of the debt management service provider.

SOURCES: Laws, 2003, ch. 465, § 5; reenacted and amended, Laws, 2006, ch. 398, § 5; reenacted without change, Laws, 2010, ch. 396, § 5, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by substituting “escrow account” for “trust account” throughout the section.

The 2010 amendment reenacted this section without change.

§ 81-22-11. Requirement for written agreement [Repealed effective July 1, 2013].

(1) **Written agreement.** — A debt management service provider may not perform debt management services for a consumer unless the consumer and the debt management service provider first have executed a written agreement with regard to the debt management services to be provided. A copy of the completed agreement must be given to the consumer.

(2) **Required provisions.** — Each agreement between a consumer and a debt management service provider must be dated and signed by the consumer and must include the following:

(a) The name and address of the consumer and the debt management service provider;

(b) A full description of the services to be performed for the consumer, any fees to be charged to the consumer for those services and any contributions, fees or charges the consumer has agreed to make or pay to the debt management service provider;

(c) Disclosure of the existence of the surety bond on file with the commissioner under Section 81-22-7 and a notice that the consumer may contact the Department of Banking and Consumer Finance at P.O. Box 23729, Jackson, MS 39225-3729 or 1-800-844-2499 with any questions or complaints regarding the debt management service provider;

(d) The identification of the federally insured institution where funds remitted by a consumer for payment to one or more creditors will be held;

(e) The right of a party to cancel the agreement by providing a written notice of cancellation to the other party;

(f) A complete list of the consumer's obligations that are subject to the agreement and the names and addresses of the creditors holding those obligations;

(g) A full description and schedule of the periodic amounts to be remitted to the debt management service provider for payment to the consumer's creditor or creditors and the amounts to be remitted to each creditor;

(h) A notice to the consumer that by executing the agreement the consumer authorizes the federally insured institution to disclose financial

records relating to the escrow account in which the consumer's funds are held under Section 81-22-9 to the commissioner during the course of any examination of the debt management service provider by the commissioner; and

(i) The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You must be given a copy of this agreement.

SOURCES: Laws, 2003, ch. 465, § 6; reenacted and amended, Laws, 2006, ch. 398, § 6; reenacted without change, Laws, 2010, ch. 396, § 6, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by deleting “and the state license number of the debt management service provider” at the end of (2)(a); in (2)(c), deleting “of this chapter” following “Section 81-22-7” and inserting “at P.O. Box 23729, Jackson, MS 39225-3729 or 1-800-844-2499” following “Consumer Finance”; and in (2)(h), substituting “escrow” for “trust,” and deleting “of this chapter” following “Section 81-22-9.”

The 2010 amendment reenacted this section without change.

§ 81-22-13. Fees charged to the consumer [Repealed effective July 1, 2013].

A debt service management provider may only charge a consumer the following fees for providing debt management services:

(a) A maintenance fee not to exceed Thirty Dollars (\$30.00) per month after a consumer has received a free initial counseling session;

(b) A one-time setup fee not to exceed Seventy-five Dollars (\$75.00);

(c) A fee for obtaining the consumer's credit report not to exceed Fifteen Dollars (\$15.00) for an individual report or Twenty-five Dollars (\$25.00) for a joint report;

(d) A fee not to exceed Fifty Dollars (\$50.00) for educational courses/products that will assist the consumer in achieving financial stability. Products shall be educational in nature and may include, but not be limited to, the following topics: Home Buyer Education, Financial Literacy Education, and Credit Report Review. However, the consumer must be informed that those courses and products are not a mandatory condition to receive debt management services; and

(e) A bankruptcy consultation fee, not to exceed Fifty Dollars (\$50.00) per consumer, may be charged, by nonprofit credit counseling agencies approved by the U.S. Trustees pursuant to 11 USC Section 111.

SOURCES: Laws, 2003, ch. 465, § 7; reenacted and amended, Laws, 2006, ch. 398, § 7; reenacted and amended, Laws, 2010, ch. 396, § 7, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by inserting “only” preceding “charge a consumer” in the introductory paragraph; rewriting (a); in (b), inserting “setup” following “one-time” and deleting “for setting up a debt management plan for a consumer”; inserting “not to exceed Fifty Dollars (\$50.00)” following “A fee” in (d); and adding (e).

The 2010 amendment reenacted and amended the section by making minor stylistic changes.

§ 81-22-15. Reports and records [Repealed effective July 1, 2013].

(1) **Written reports to consumers.** — A debt management service provider shall provide to each consumer receiving debt management services periodic written reports accounting for funds received from the consumer for payment to the consumer’s creditor or creditors whose obligations are listed in the consumer’s agreement with the debt management service provider and disbursements made to each such creditor on the consumer’s behalf since the last report. The debt management service provider shall provide those reports to the consumer not less than once each calendar quarter.

(2) **Maintenance of records.** — Any person required to be licensed under this chapter shall maintain in its offices, or such other location as the department permits, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this chapter and the rules and regulations adopted by the department under this chapter. These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved. A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for six (6) years following the final transaction with the consumer.

(3) **Verification of Payments to Creditors.** — Licensees that participate in fair share contributions with creditors shall maintain records that reflect client accounts were credited for the full amount of any payments due and not the net amount as a result of a fair share contribution. Such records may consist of either a copy of the client’s statement from the creditor or the licensee may send a monthly or quarterly statement to clients that reflect payments remitted to creditors.

(4) Within fifteen (15) days of the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities on the licensee’s business in this state:

- (a) The filing for bankruptcy or reorganization by the licensee;
- (b) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority; or
- (c) Any felony indictment or conviction of the licensee or any of its directors or principal officers.

SOURCES: Laws, 2003, ch. 465, § 8; reenacted and amended, Laws, 2006, ch. 398, § 8; reenacted without change, Laws, 2010, ch. 396, § 8, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by adding (3) and (4).

The 2010 amendment reenacted this section without change.

§ 81-22-17. Powers and functions of commissioner [Repealed effective July 1, 2013].

The commissioner may exercise the following powers and functions:

(a) **Complaint investigation.** — The commissioner may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases to the Attorney General, who shall appear for and represent the commissioner in court.

(b) **Rules.** — The commissioner may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this chapter.

(c) **Examination of licensees.** — To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

(d) **Examination of nonlicensees.** — The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter, including, without limitation, the conduct of business without a license as required under this chapter.

SOURCES: Laws, 2003, ch. 465, § 9; reenacted and amended, Laws, 2006, ch. 398, § 9; reenacted without change, Laws, 2010, ch. 396, § 9, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by making a minor stylistic change in (d).

The 2010 amendment reenacted this section without change.

§ 81-22-19. Prohibited acts [Repealed effective July 1, 2013].

A debt management service provider may not:

- (a) **Purchase debt.** — Purchase any debt or obligation of a consumer;
- (b) **Lend money.** — Lend money or provide credit to any consumer;
- (c) **Mortgage interest.** — Obtain a mortgage or other security interest in property of a consumer;
- (d) **Debt collector.** — Operate as a debt collector in this state; or
- (e) **Negative amortization.** — Structure an agreement for the consumer that, at the conclusion of the projected term for the consumer's participation in the debt management service agreement, would result in negative amortization of any of the consumer's obligations to creditors.

SOURCES: Laws, 2003, ch. 465, § 10; reenacted without change, Laws, 2006, ch. 398, § 10; reenacted without change, Laws, 2010, ch. 396, § 10, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted the section without change. The 2010 amendment reenacted this section without change.

§ 81-22-21. Advertising [Repealed effective July 1, 2013].

(1) **False advertising.** — A debt management service provider may not engage in this state in false or misleading advertising concerning the terms and conditions of any services or assistance offered.

(2) **Required words.** — A debt management service provider may not advertise its services in Mississippi in any media disseminated primarily in this state, whether print or electronic, without the words "Licensed Debt Management Service Provider."

(3) **Dissemination; no liability.** — This section does not impose liability on the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated.

SOURCES: Laws, 2003, ch. 465, § 11; reenacted without change, Laws, 2006, ch. 398, § 11; reenacted without change, Laws, 2010, ch. 396, § 11, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted the section without change. The 2010 amendment reenacted this section without change.

§ 81-22-23. Effects of violations on rights of parties [Repealed effective July 1, 2013].

(1) **Violations; unfair, unconscionable or deceptive practices.** — A debt management service provider that violates any provision of this chapter or any rule adopted by the commissioner, or that through any unfair, unconscionable or deceptive practice causes actual damage to a consumer is subject to enforcement action under subsection (2) of this section.

(2) **Enforcement actions.** — The following enforcement actions may be taken by the commissioner or an aggrieved consumer against a debt management service provider for violations of any provision of this chapter or any rule adopted under this chapter, or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:

(a) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any chancery court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction;

(b) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee, individual required to be registered, or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil penalty shall not exceed Five Hundred Dollars (\$500.00) per violation and shall be deposited into the Consumer Finance Fund of the department;

(c) The state may enforce its rights under the surety bond as required in Section 81-22-7 as an available remedy for the collection of any civil penalties, criminal fines or costs of investigation and/or prosecution incurred;

(d) A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the debt management service provider in an amount determined by the court plus costs of the action together with reasonable attorney's fees; or

(e) Revocation, suspension or nonrenewal of the debt management service provider's license under Section 81-22-25.

SOURCES: Laws, 2003, ch. 465, § 12; reenacted and amended, Laws, 2006, ch. 398, § 12; reenacted without change, Laws, 2010, ch. 396, § 12, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted and amended the section by deleting "of this chapter" following "Section 81-22-7" in (2)(c) and following "Section 81-22-25" in (2)(e).

The 2010 amendment reenacted this section without change.

§ 81-22-25. Suspension or revocation of registration [Repealed effective July 1, 2013].

(1) **Suspension or revocation.** — After notice and hearing, the commissioner may suspend or revoke a debt management service provider's license if the commissioner finds that one of the conditions of subsection (2) of this section is met.

(2) **Conditions for suspension or revocation.** — The following conditions are grounds for suspension or revocation of a registration:

(a) A fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying the application;

(b) The licensee knowingly violates a material provision of this chapter or rule or order validly adopted by the commissioner under authority of this chapter;

(c) The licensee is insolvent;

(d) The licensee refuses to permit the commissioner to make an examination authorized by this chapter; or

(e) The licensee fails to respond within a reasonable time and in an appropriate manner to communications from the commissioner.

SOURCES: Laws, 2003, ch. 465, § 13; reenacted without change, Laws, 2006, ch. 398, § 13; reenacted without change, Laws, 2010, ch. 396, § 13, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted the section without change. The 2010 amendment reenacted this section without change.

§ 81-22-27. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2013].

The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for the fiscal year 2003, to carry out and enforce the provisions of this chapter. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

SOURCES: Laws, 2003, ch. 465, § 14; reenacted without change, Laws, 2006, ch. 398, § 14; reenacted without change, Laws, 2010, ch. 396, § 14, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2006 amendment reenacted the section without change. The 2010 amendment reenacted this section without change.

§ 81-22-28. Written notice of intent by licensee to use third-party payment processor; content of notice; surety bond required; examination of third-party payment processor records by department; termination of agreement or contract with third-party payment processor. [Repealed effective July 1, 2013].

(1) If a licensee seeks to utilize a third-party payment processor, to hold, have access to, effectuate possession of, by any means, or to distribute or be in the chain of distribution of the monies of another licensee's consumers, the licensee shall give the Department of Banking and Consumer Finance ten (10) days' written notice.

(2) Such notice shall contain the name and address of the third-party payment processor, a description of the services, a copy of the agreement or contract between the licensee and the third-party payment processor and the highest daily amount of consumer funds to be held or transmitted. The third-party payment processor shall submit to the department, upon request, the highest daily amount held or transmitted during the previous month.

(3) Each third-party payment processor shall file with the commissioner a surety bond, issued by a bonding company or insurance company authorized to do business in the State of Mississippi, in the principal sum of Fifty Thousand Dollars (\$50,000.00) and in an additional principal sum of Fifty Thousand Dollars (\$50,000.00) for each additional licensee it contracts with, but in no event shall the bond be required to be in excess of One Hundred Fifty Thousand Dollars (\$150,000.00). In lieu of the surety bond, a third-party payment processor may file other assets such as cash, a certificate of deposit or government bonds.

(4) A licensee shall not use a third-party payment processor until the licensee receives written notice from the department confirming that the department has received a surety bond or other assets from the third-party payment processor.

(5) Prior to performing any of its services, the third-party payment processor shall provide written authorization for the department to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the consumers' monies held by, or distributed by the third-party payment processor to the creditors of the consumers and shall have received written confirmation from the department that the written authorization is sufficient. The cost of the examination shall be paid by the licensee.

(6) All agreements or contracts between a licensee and a third-party payment processor shall provide for a thirty-day written notice of termination to the party against whom termination is being sought. A licensee shall immediately notify the department in writing of the notice of termination.

(7) In the event a licensee elects to maintain cash, a certificate of deposit or government bonds on deposit, and utilizes the services of a third-party payment processor, there is no requirement that the third-party payment

processor obtain a surety bond or maintain other assets on deposit with the department.

SOURCES: Laws, 2006, ch. 398, § 15; reenacted without change, Laws, 2010, ch. 396, § 15, eff from and after July 1, 2010.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2010 amendment reenacted this section without change.

§ 81-22-29. Repealed.

Repealed by Laws of 2006, ch. 398, § 18, effective from and after July 1, 2006.

[Laws, 2003, ch. 465, § 15, eff from and after July 1, 2003.]

Editor's Note — Former § 81-22-29 provided an application deadline for existing nonprofit corporations engaged in the business of debt adjusting.

§ 81-22-31. Repeal of Sections 81-22-1 through 81-22-28.

Sections 81-22-1 through 81-22-28, Mississippi Code of 1972, shall stand repealed on July 1, 2013.

SOURCES: Laws, 2006, ch. 398, § 16; reenacted and amended, Laws, 2010, ch. 396, § 16, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment reenacted the section and extended the date of the repealer for §§ 81-22-1 through 81-22-28 by substituting "July 1, 2013" for "July 1, 2010."

CHAPTER 27

Multistate, State and Limited Liability Trust Institutions

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ARTICLE 1.

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SUBARTICLE B.

COMPANIES AUTHORIZED TO ACT AS A FIDUCIARY.

SEC.

81-27-1.102.	Activities not requiring a charter, etc.
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§ 81-27-1.101. Companies authorized to act as a fiduciary.**ATTORNEY GENERAL OPINIONS**

"Title agent companies" are engaged in the trust business and likewise may only engage in such activities on behalf of an entity listed in Section 81-27-1.101, unless excepted under Section 81-27-1.102. Whether a particular "title agent com-

pany" is performing such activities on behalf of an authorized entity or is otherwise excepted under Section 81-27-1.102, is a determination that would have to be made on a case by case basis. Allison, Dec. 16, 2005, A.G. Op. 05-0423.

§ 81-27-1.102. Activities not requiring a charter, etc.

Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter, license or registration under this chapter or in an unauthorized trust activity by:

(a) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(b) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court of this state;

(c) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(d) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Mississippi Real Estate Commission;

(e) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Secretary of State or the Securities and Exchange Commission;

(f) Rendering service as a financial advisor or financial planner, provided that the person rendering that service has successfully completed the education and training requirements prescribed by a national certifying organization, has received certification from that organization, and holds current certification from that organization;

(g) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Department of Insurance to the extent that the activity is regulated by the Department of Insurance;

(h) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the Insurance Commissioner under Section 83-37-1 et seq. or engaging in the lawful business of a perpetual care cemetery corporation under Sections 41-43-35 through 41-43-53;

(i) Acting as trustee under a voting trust as provided by Section 91-9-1 et seq.;

(j) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations

or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(k) Engaging in other activities expressly excluded from the application of this chapter by rule of the department;

(l) Rendering services customarily performed by a certified public accountant in a manner authorized by the State Board of Public Accountancy;

(m) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to Section 81-27-2.302(b), (1) marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state, (2) delivering money or other intangible assets and receiving the same from a client or other person in this state, or (3) accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client;

(n) Acting as trustee by a religious denomination, church or synagogue, including affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such religious denomination, church or synagogue with respect to its religious or charitable purposes.

SOURCES: Laws, 1998, ch. 437, § 1; Laws, 2010, ch. 557, § 1, eff from and after passage (approved May 12, 2010.)

Amendment Notes — The 2010 amendment added (n).

ATTORNEY GENERAL OPINIONS

"Title agent companies" are engaged in the trust business and likewise may only engage in such activities on behalf of an entity listed in Section 81-27-1.101, unless excepted under Section 81-27-1.102. Whether a particular "title agent com-

pany" is performing such activities on behalf of an authorized entity or is otherwise excepted under Section 81-27-1.102, is a determination that would have to be made on a case by case basis. Allison, Dec. 16, 2005, A.G. Op. 05-0423.

ARTICLE 2.

TRUST INSTITUTION OFFICES.

Subarticle A. State Trust Institution Offices.....81-27-2.001

SUBARTICLE A.

STATE TRUST INSTITUTION OFFICES.

SEC.

81-27-2.003. State trust company principal office.

§ 81-27-2.003. State trust company principal office.

(a) Each state trust company must have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the state trust company for service of process.

(c) A state trust company may change its principal office to any location within this state by filing a written notice with the commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(d) The change of principal office shall take effect on the thirty-first day after the date the commissioner receives the notice pursuant to paragraph (c) of this section, unless the commissioner establishes an earlier or later date or unless prior to such day the commissioner notifies the state trust company that it must establish to the satisfaction of the commissioner that the relocation is consistent with the original determination made under Section 81-27-4.103(b) for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (d). The reference to “Section 81-27-4.003(b)” was changed to “Section 81-27-4.103(b).” The Joint Committee ratified the correction at its August 5, 2008, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

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SUBARTICLE D.

SPECIAL PROVISIONS FOR LIMITED LIABILITY TRUST COMPANIES.

SEC.

81-27-6.307. Dissolution.

§ 81-27-6.307. Dissolution.

(a) A limited liability trust company organized under this article is dissolved on:

(1) The expiration of the period fixed for the duration of the limited liability trust company;

(2) A vote to dissolve or the execution of a written consent to dissolve by all full liability participants, if any, and a sufficient number of other participants that combined with all full liability participants hold at least two-thirds (2/3) of the participation shares in each class in the association, or a greater fraction as provided by the articles of association;

(3) Except as provided by the articles of association, the death, adjudication of incompetence, expulsion, bankruptcy, retirement, or resignation of a participant unless a majority in interest of all remaining participants elect in writing not later than the ninetieth day after the date of the event to continue the business of the association; or

(4) The occurrence of an event of dissolution specified in the articles of association.

(b) A dissolution under this section is considered to be the initiation of a voluntary liquidation under Subarticle B of Article 7 of this chapter.

(c) An event of dissolution described by subsection (a) (3) of this section does not cancel or revoke a contract to which the state trust company is a party, including a trust indenture or agreement or voluntary dissolution under Subarticle B of Article 7 of this chapter, until the period for the remaining participants to continue the business of the state trust company has expired without the remaining participants having completed the necessary action to continue the business of the state trust company.

SOURCES: Laws, 1998, ch. 437, § 1; Laws, 2008, ch. 442, § 22, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted “adjudication of incompetence” for “insanity” in (3).

ARTICLE 7.

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SUBARTICLE A.

SUPERVISION AND EXAMINATION.

SEC.

81-27-7.001. Commissioner shall have supervision over authorized trust institutions and shall examine.

§ 81-27-7.001. Commissioner shall have supervision over authorized trust institutions and shall examine.

(a) For the purposes of this article, the term “authorized trust institution” means any state trust company, trust office or representative trust office.

(b) Every authorized trust institution shall be under the supervision of the commissioner. The commissioner shall execute and enforce through the

department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner may promulgate such rules or regulations not inconsistent with the provisions of the chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under its supervision taking into consideration the appropriate interest of the creditors, stockholders, participants and the public in their relations with such authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules, regulations, and instructions that may be promulgated or issued by the commissioner.

(c) The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether companies or offices are subject to the provisions of this article, may examine authorized trust institutions that have a charter, license or registration under this chapter and companies or offices that are reasonably suspected by the commissioner of conducting business that requires a charter, license or registration under this chapter, including all relevant books, records and papers employed by those companies or offices in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those companies or offices, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a charter, license or registration as required under this chapter.

SOURCES: Laws, 1998, ch. 437, § 1; Laws, 2007, ch. 341, § 1, eff from and after passage (approved Mar. 14, 2007.)

Amendment Notes — The 2007 amendment added (c).

CHAPTER 29

Lender Trade Name and Trademark Use

SEC.

81-29-1. Definitions.

81-29-3. Use of lender's trade name or trademark or specific loan information by other than the lender prohibited except under certain circumstances; injunction for violation.

§ 81-29-1. Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

(a) "Lender" means a bank, savings bank, savings and loan association, credit union, small loan company, finance company, mortgage company, mortgage broker or other person who makes or services loans in this state, and any affiliate thereof, or any third party operating with the consent of the lender. A person shall not be considered a lender based on the person's former employment with the lender.

(b) "Person" means any individual, firm, corporation, partnership, organization, association or other legal entity.

SOURCES: Laws, 2008, ch. 370, § 1, eff from and after July 1, 2008.

Cross References — Registration of trademarks and labels generally, see §§ 75-25-1 et seq.

§ 81-29-3. Use of lender's trade name or trademark or specific loan information by other than the lender prohibited except under certain circumstances; injunction for violation.

(1) A person other than the owner of the trade name or trademark may not use a trade name or trademark of a lender or a trade name or trademark confusingly similar to that of a lender in a solicitation for the offering of services or products without the written consent of the lender, unless the solicitation clearly and conspicuously states in boldfaced type on the front page of the correspondence containing the solicitation all of the following:

(a) The name, address and telephone number of the person making the solicitation.

(b) That the person making the solicitation is not affiliated with the lender.

(c) That the solicitation is not authorized or sponsored by the lender.

(d) That the loan information referenced was not provided by the lender.

(2) A person may not use a loan number, loan amount or other specific loan information that is not publicly available in a solicitation for the purchase of services or products. However, the prohibition does not apply to the use by a lender or its affiliates in communications with a current or former customer of the lender of a loan number, loan amount or other specific loan information derived from the business relationship between the lender and the current or former customer.

(3)(a) A person other than the lender may not use a loan number, loan amount or other specific loan information that is publicly available in a solicitation for the purchase of services or products unless the solicitation clearly and conspicuously states in boldfaced type on the front page of the correspondence containing the solicitation all of the following:

(i) The name, address and telephone number of the person making the solicitation.

(ii) That the person making the solicitation is not affiliated with the lender.

(iii) That the solicitation is not authorized or sponsored by the lender.

(iv) That the loan information referenced was not provided by the lender.

(b) The prohibition in paragraph (a) does not apply to the use by a lender or its affiliates in communications with a current or former customer of the lender of a loan number, loan amount or other specific loan information derived from the business relationship between the lender and the current or former customer.

(4) Any reference to a lender without consent of the lender as required by this chapter and any reference to a loan number, loan amount or other specific loan information appearing on the outside of an envelope, visible through the envelope window, or on a postcard, in connection with any written communication that includes or contains a solicitation for services or products is prohibited.

(5) It is not a violation of this chapter for a person to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.

(6) A lender or owner of a trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the trade name, trademark or loan information. The person seeking the injunction shall not be required to prove actual damage as a result of the violation. Irreparable harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages and any profits the defendant has accrued as a result of the violation. The prevailing party in any action brought under this subsection is entitled to recover costs associated with the action and reasonable attorney fees from the other party.

SOURCES: Laws, 2008, ch. 370, § 2, eff from and after July 1, 2008.

Cross References — Registration of trademarks and labels generally, see §§ 75-25-1 et seq.

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